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Presidential Documents

Title 3—

The President

Proclamation 10253 of September 10, 2021

National Small Business Week, 2021

By the President of the United States of America

A Proclamation

The American entrepreneurial spirit is a defining quality of our Nation which time and again has lifted us to new heights and carried us through our greatest challenges. Small businesses are not only the engines of our economic progress—they are the heart and soul of our communities. During National Small Business Week, we celebrate our Nation's small businesses—the pillars of their neighborhoods and towns—and all of the people who dream them, build them, and make them run.

When the COVID–19 pandemic first struck last year, it posed a historic challenge to America's small businesses. From coast to coast, in big cities, small towns, rural enclaves, and Tribal communities, small business owners and workers demonstrated remarkable courage and resilience, adapting to sudden changes in our way of life and stepping up to serve their communities. Across the country, small businesses extended helping hands to their neighbors during the pandemic's darkest hours, all while entrepreneurs and employees worked tirelessly around the clock to keep their businesses afloat, make payroll, and ensure the safety of their teams and customers.

Despite the determination of our Nation's small business owners and their employees, the pandemic hit them hard. Throughout 2020, empty storefronts and goodbye signs hanging in windows could be found on Main Streets across the country. The pizza place that your kids loved best. The hardware store that always had the tool you needed. The barber shop that sponsored the local Little League team—and had the first dollar bill it ever earned still framed on the wall. The pandemic exacted an incalculable toll not only on lives and livelihoods, but on far too many small business dreams and family legacies.

To ensure that these community pillars have a fighting chance to reopen and stay open, my Administration is delivering the loans and support that our Nation's more than 30 million small businesses and innovative startups need. The American Rescue Plan delivered billions of dollars in economic relief to millions of small businesses—including programs targeted to the hardest-hit industries such as restaurants and performing arts venues. We revamped the Paycheck Protection Program to reach our smallest businesses, with more than 95 percent of the nearly $300 billion in loans made during my Administration supporting small businesses with less than 20 employees, reaching a higher share of businesses in rural and low- or moderate-income communities than in the previous two rounds of the program. Through our Restaurant Revitalization Fund, we provided an essential lifeline to more than 100,000 businesses across the country, delivering $28.6 billion in direct support. Last week, my Administration began accepting applications for an improved COVID–19 Economic Injury Disaster Loan program, which will put more than $150 billion in funding to work offering long-term, low-interest loans that small businesses can use to retain workers, make rent, and pay down more expensive debt. In the American Rescue Plan, we established the Community Navigator Pilot program to create a network of trusted organizations, local governments, and community champions to

help underserved small businesses navigate resources at all stages of their growth.

We have also fully vaccinated more than 64 percent of adult Americans, so that more small businesses can reopen their doors and welcome back their customers. My Administration created a tax credit to help small businesses—which employ nearly half of America's private workforce—give their employees paid time off to get vaccinated and recover.

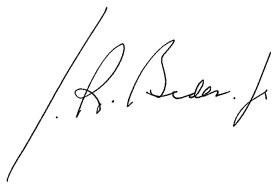
My Administration is also committed to nurturing small businesses that have faced historic barriers in rural and urban America, including businesses owned by veterans, women, and people of color—especially Black, Latino, and Asian American businesses. These entrepreneurs continue to face persistent barriers to the capital, markets, and networks they need to start and grow their businesses, and many were left out of early rounds of relief in the earlier days of the pandemic.

To help ensure that small businesses in every community benefit from the Build Back Better agenda's landmark investments in our infrastructure, we are strengthening our contracting programs for underserved small businesses. As part of this effort, I announced a Government-wide goal to grow Federal contracting with small, disadvantaged businesses by 50 percent, translating into an additional $100 billion over 5 years. By ensuring that more disadvantaged small businesses can compete for and win Federal contracts, we can boost job opportunities and economic prosperity in every corner of America.

Our Nation's small businesses define our communities, drive innovation, and create the products and services that enrich our lives and solve global problems to build a better and more sustainable world. By harnessing the power of our small business economy and equipping our entrepreneurs with the tools and resources they need to innovate, adapt, and grow, our economy will continue to build back better than ever before. America's small businesses are up to the task.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 12 to September 18 as National Small Business Week. I call upon all Americans to recognize the contributions of small businesses to the American economy, continue supporting them, and honor the occasion with programs and activities that highlight these important businesses.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of September, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-sixth.



[FR Doc. 2021–20031
Filed 9–14–21; 8:45 am]
Billing code 3295–F1–P

Presidential Documents

Proclamation 10254 of September 10, 2021

Patriot Day and National Day of Service and Remembrance, 2021

By the President of the United States of America

A Proclamation

Twenty years ago, the United States endured one of the most unconscionable tragedies in our country's history. The cowardly terrorist attacks on the World Trade Center, the Pentagon, and onboard United Flight 93 cut short the lives of 2,977 innocent people. These attacks tore a hole in the heart of our Nation, and the pain of this tragedy still remains. Each year on this somber date, we remember the horror and bravery shown that day, just as we remember how we came together, united in grief and in purpose. Each year, we renew our solemn vow to never forget what happened on September 11, 2001, or those who lost their lives.

On Patriot Day and National Day of Service and Remembrance, we honor every life that was taken too soon. We honor the first responders—firefighters, law enforcement officers, emergency workers, and service members—who answered the call of duty, and the brave civilians who rushed into action to save lives that day. Their courage embodies the American spirit and resilience, and their heroism continues to inspire new generations of Americans.

My mother used to say that ''courage lies in every heart, and one day it will be summoned.'' It was summoned and shown by those who responded to the events on 9/11. First responders, emergency workers, and civilians ran to where the devastation was the greatest, where death came in an instant but where there were survivors to be found; a determined group of heroes onboard United Flight 93 sacrificed their lives to save the lives of others—in every case, Americans faced the unimaginable with resolve and courage. Today and every day, we draw hope from the strength and selflessness of those who stepped up to serve their fellow man and our Nation on that tragic day.

We also remember the patriotism and valor of our service members who pursued our attackers, delivered justice to Osama bin Laden, and degraded al-Qa'ida. We will keep our sacred obligation to care for our service members and veterans who served in Afghanistan over the last 20 years, as well as their families, caregivers, and survivors.

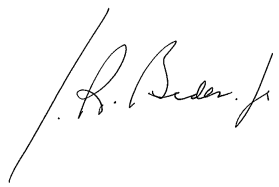
Over the last two decades the American people have demonstrated that the harder the circumstances, the more resilient and stronger we become. Our shared love of country and our shared values—regardless of race, gender, religion, origin, or economic status—unite us as Americans against all enemies, foreign and domestic.

Today, on this Patriot Day and National Day of Service and Remembrance, we move forward as one Nation, united by our common goal of liberty and justice for all. We remember those killed on September 11, 2001, and honor them through acts of service. I encourage all Americans to visit americorps.gov/911-day to learn about and seek opportunities to serve others on this day and to demonstrate once again that the ideals we hold, which many have tried to attack and destroy, are the very bonds that hold us together—even tighter in times of peril.

By a joint resolution approved December 18, 2001 (Public Law 107–89), the Congress has designated September 11 of each year as ''Patriot Day,'' and by Public Law 111–13, approved April 21, 2009, the Congress has requested the observance of September 11 as an annually recognized ''National Day of Service and Remembrance.''

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim September 11, 2021, as Patriot Day and National Day of Service and Remembrance. I call upon all departments, agencies, and instrumentalities of the United States to display the flag of the United States at half-staff on Patriot Day and National Day of Service and Remembrance in honor of the individuals who lost their lives on September 11, 2001. I invite the Governors of the United States and its Territories and interested organizations and individuals to join in this observance. I call upon the people of the United States to participate in community service in honor of those our Nation lost, to observe this day with appropriate ceremonies and activities, including remembrance services, and to observe a moment of silence beginning at 8:46 a.m. eastern daylight time to honor the innocent victims who perished as a result of the terrorist attacks on September 11, 2001.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of September, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-sixth.



[FR Doc. 2021–20036
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Presidential Documents

Proclamation 10255 of September 10, 2021

National Grandparents Day, 2021

By the President of the United States of America

A Proclamation

On National Grandparents Day, we celebrate the important role grandparents play in providing love, wisdom, and strength to their families, and fostering greater understanding across generations. Grandmas and grandpas, abuelas y abuelos, nanas and pop-pops—through their wisdom, their perseverance, and their unconditional love—strengthen our family bonds. They share with us who we are, where we come from, and the experiences that have shaped their lives, and, in many cases, shaped our Nation.

For Jill and me, there is no greater joy than spending time with our own grandchildren. They are the love of our lives, and the life of our love.

The COVID–19 pandemic has been particularly devastating to seniors, and too many families have lost grandparents to the virus. We mourn them as a Nation. To honor the memory of those we have lost and protect those most vulnerable, we mobilized an historic vaccination effort. Already, we have fully vaccinated over 82 percent of all seniors and over 64 percent of all adults—allowing grandparents and their loved ones to get back together safely.

During the worst of COVID–19, we saw the bonds of love that grandparents share with their families remain strong. While the virus denied many grandparents the opportunity to hug their grandchildren, we saw families visiting grandparents outside a window, waving from a safe distance, participating in car parades, or making video calls to stay connected. Grandparents and grandchildren were resilient and creative—sharing recitals, sporting events, graduations, and other important family milestones remotely. Physically apart, we remained bonded by love, faith, and the uniquely American spirit. As we continue our fight against the virus, we are once again able to enjoy the in person warmth and care of our grandparents, and they can enjoy precious time with their children and grandchildren.

For many families, grandparents are the caregivers who provide trusted support to parents and children alike. They care for grandchildren while their parents are at work, pick up grandchildren from school and activities, and provide advice and comfort when needed most. In increasing numbers, grandparents have become primary caregivers when parents cannot care for their children. They sacrifice their own retirement plans, and often strain their own health and financial stability, to ensure their grandchildren continue to grow and learn within the warm embrace of a loving family.

In 2018, the Congress enacted the Supporting Grandparents Raising Grandchildren Act, which established an Advisory Council to Support Grandparents Raising Grandchildren. By the end of this year, the Council will release their first report to the Congress, including recommendations intended to advance change and improve support programs for grandparent and kinship families of all ages.

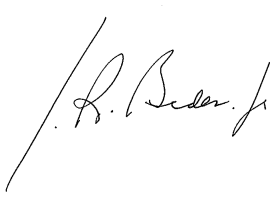
My Administration looks forward to the release of this report so that we can use it as a guide to improve the livelihoods of grandparents and other older relative caregivers. As President, I am committed to identifying unmet needs, highlighting systemic gaps, and providing recommendations on how

we can work together to improve the lives of grandparents and the children they support.

Thanks to our whole-of-government response, heroic frontline workers, world-class scientists, and millions of Americans getting vaccinated, many of us are able to hug our grandparents, and gather around a table once again. We still have more work to do, but we have learned to never take time together for granted. If everyone does their part in getting vaccinated—we will continue to create new, joyful memories. We are grateful for the blessing of that opportunity, and we hope every family will cherish their grandparents today and every day.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 12, 2021, as National Grandparents Day. I call upon all Americans to celebrate the important role that grandparents play in the lives of their families and the children they love.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of September, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-sixth.



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Rules and Regulations

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0368; Project Identifier MCAI–2021–00204–T; Amendment 39–21705; AD 2021–18–04]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A318, A319, A320, and A321 series airplanes. This AD was prompted by reports of low halon concentration in the forward and aft cargo compartments due to air leakage through cargo door seals, and the certification of improved cargo door seals. This AD requires repetitive cleaning and greasing of affected cargo door seals; replacing the forward, aft, and bulk cargo compartment door seals with new seals; and installing a placard on the forward, aft, and cargo compartment doors; and for certain airplanes, implementing an operational limitation for certain routes, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 20, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 20, 2021.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0368.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0368; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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: Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0049, dated February 18, 2021 (EASA AD 2021–0049) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A318–111, –112, –121, and –122; A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N; A320–211, –212, –214, –215, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N; and A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A318, A319, A320, and A321 series airplanes. The NPRM published in the **Federal Register** on May 17, 2021 (86 FR 26682). The NPRM was prompted by reports of low halon concentration in the forward and aft cargo compartments due to air leakage through cargo door seals, and the certification of improved cargo door seals. The NPRM proposed to require replacing the forward, aft, and bulk cargo compartment door seals with new seals; and installing a placard on the forward, aft, and cargo compartment doors; and for certain airplanes, implementing an operational limitation for certain routes, as specified in EASA AD 2021–0049. The NPRM specified that accomplishing the proposed AD would terminate all requirements (*i.e.,* repetitive cleaning and greasing of affected cargo door seals) of AD 2020–16–01, Amendment 39–21185 (85 FR 47013, August 4, 2020) (AD 2020–16–01) for the affected original equipment manufacturer (OEM) parts only (*i.e.,* forward and aft cargo door seals having part number (p/n) D5237106020000, D5237106020200, D5237106020400, D5237300120000, or D5237300120200; and bulk cargo door seals having p/n D5237200220000 or D5237200220200).

The FAA is issuing this AD to address low halon concentration, which could affect the fire extinguishing system efficiency in the cargo compartments and possibly result in failure of the system to contain a cargo compartment fire. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Change NPRM to a Supersedure of AD 2020–16–01

Delta Air Lines (Delta) requested that the FAA change the NPRM from a new AD to a supersedure of AD 2020–16–01. Delta stated that a supersedure adds flexibility for operators and makes compliance to the rule simpler and

cleaner for operators. Delta provided the following justification.

• Delta noted paragraph (h)(2) of the proposed AD states that paragraphs (1) and (2) of EASA AD 2021–0049 do not apply and attributed the exception to AD 2020–16–01 not being superseded. Delta further stated that not having paragraph (2) of EASA AD 2021–0049 within the requirements of the proposed AD is restrictive to operators because that paragraph allows using the aircraft maintenance manual (AMM) as an alternative to the cleaning and greasing requirements in paragraph (1) of EASA AD 2021–0049 (which corresponds to FAA AD 2020–16–01). Delta noted that paragraph (1) of EASA AD 2021–0049 also includes a clarification to the requirements.

• Delta also stated paragraph (h)(6) of the proposed AD specifies that paragraphs (5) and (6) of EASA AD 2021–0049 do not apply and reasoned it is because they are related to the cleaning and greasing actions in paragraph (1) of EASA AD 2021–0049, which are not included in the proposed AD. Delta suggested that if the NPRM was changed to supersede AD 2020–16–01, then the exceptions in paragraphs (h)(2) and (h)(6) of the proposed AD would not be needed. Delta concluded the same actions would be accomplished and credit would be given for previously accomplished actions.

• Delta stated that the proposed AD does not include the exception from paragraph (h)(3) of AD 2020–16–01 that adds forward and aft cargo door seals part number D5237106020400S, approved under parts manufacturer approval (PMA) PQ1715CE. Delta noted that if the proposed AD did remove the exceptions in paragraphs (h)(2) and (h)(6) of the proposed AD (*e.g.,* if the NPRM did supersede AD 2020–16–01), then the PMA part could be included by added new exceptions.

The FAA has determined that the OEM parts specified in AD 2020–16–01 should be addressed in separate rulemaking and the FAA is also considering further rulemaking to address the corresponding PMA parts in a separate rulemaking action.

The FAA does not agree to supersede AD 2020–16–01 with this AD. At the time the NPRM was developed, the FAA separated the rulemaking for OEM parts from the PMA parts since the FAA was informed of implementation issues with the adoption of a combined rulemaking (OEM parts and PMA parts) by the foreign civil aviation authorities. Therefore, as an interim action, the FAA has decided to issue separate ADs for the OEM parts and the PMA parts. The FAA is discussing how to address OEM and PMA parts in ADs for future rulemaking. However, in the interest of safety to address the unsafe condition on the OEM parts identified in this AD, the FAA has determined this AD cannot be delayed.

The FAA does agree to retain the requirements of AD 2020–16–01 in this AD for the affected OEM parts identified in EASA AD 2021–0049. This will allow operators to comply with a single AD for those parts. The FAA cannot supersede AD 2020–16–01 in this AD as that would add requirements for the PMA part approved under PMA PQ1715CE that were not included in the NPRM. As discussed previously, the FAA is considering separate rulemaking for the PMA part approved under PMA PQ1715CE that replicates the provisions and requirements of this AD for those parts.

The FAA has removed the exception specified in paragraph (h)(2) of the proposed AD that stated paragraphs (1) and (2) of EASA AD 2021–0049 do not apply. Therefore, this AD now includes the cleaning and greasing required by AD 2020–16–01 for the affected OEM parts and now allows for the provision specified in paragraph (2) of EASA AD 2021–0049. The FAA has added an exception to paragraph (h)(2) of this AD to correlate the compliance time specified in paragraph (1) of EASA AD 2021–0049 with the compliance time in AD 2020–16–01. Paragraph (h)(2) of this AD also explains that operators only need to show compliance with the cleaning and greasing done on or after the effective date of this AD for the actions required by paragraph (1) of EASA AD 2021–0049 for any of the affected OEM parts; operators will no longer need to show compliance with the requirements of AD 2020–16–01 for affected OEM parts.

The FAA has also removed the exception specified in paragraph (h)(6) of the proposed AD that stated paragraphs (5) and (6) of EASA AD 2021–0049 do not apply. Paragraph (5) of EASA AD 2021–0049 provides credit for paragraph (1) of EASA AD 2021–0049. Paragraph (6) of EASA AD 2021–0049 provides terminating action for paragraph (1) of EASA AD. The FAA has also clarified the terminating action statement in paragraph (i) of this AD.

Request To Clarify Paragraph (h)(4) of the Proposed AD

Delta asked if amending ''the existing AFM and corresponding operational procedures'' must be done by inserting a copy of EASA AD 2021–0049 into all applicable documentation or must a copy of the EASA AD and the FAA AD be inserted. The FAA infers Delta is seeking clarification on this requirement.

The FAA notes that operators do not need to insert both a copy of the EASA AD and the FAA AD. Inserting a copy of only EASA AD 2020–0049 into the existing aircraft flight manual (AFM) and applicable corresponding operational procedures is one acceptable method to comply with this requirement. The FAA has revised paragraph (h)(4) of this AD accordingly.

Request To Clarify Paragraph (h)(3) of the Proposed AD

Delta requested that the FAA explain the intent of the exception in paragraph (h)(3) of the proposed AD, which states the requirement ''to operate the aircraft accordingly'' specified in paragraph (4) of EASA AD 2021–0049 does not apply because that action is already required by existing FAA operating regulations. Delta asked for confirmation that there are no procedural changes required for U.S. operators because the operating requirements are already being complied with.

The FAA notes that intent of the exception in paragraph (h)(3) of this AD was explained in the preamble of the NPRM in ''Proposed AD requirements.'' To clarify, paragraph (4) of EASA AD 2021–0049 requires flightcrew action to implement the AFM limitation that has been added to the existing AFM. FAA regulations require pilots to follow the procedures in the existing AFM including all updates. 14 CFR 91.9 requires that any person operating a civil aircraft must comply with the operating limitations specified in the AFM. Therefore, operators already must comply with the operating requirements per the FAA regulations and an AD requirement ''to operate the airplane accordingly'' is not necessary.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule with the changes described previously and minor editorial changes. The FAA has determined that these minor changes:

• Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM.

The FAA also determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0049 describes procedures for repetitive cleaning and greasing of affected cargo door seals; replacing the forward, aft, and bulk cargo compartment door seals with new seals; and installing a placard on the forward, aft, and bulk cargo compartment door. For certain airplanes, EASA AD 2021–0049 describes procedures for implementing an operational limitation prohibiting flying the airplane over a route having a diversion time of more than 60 minutes. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 1,728 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2020-16-01.	1 work-hour × $85 per hour = $85.	$0	$85	$146,880.
New actions	Up to 11 work-hours × $85 per hour = Up to $935.	Up to $6,760	Up to $7,695	Up to $13,296,960.

Authority for This Rulemaking

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

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

Regulatory Findings

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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–18–04 Airbus SAS: Amendment 39–21705; Docket No. FAA–2021–0368; Project Identifier MCAI–2021–00204–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 20, 2021.

(b) Affected ADs

This AD affects AD 2020–16–01, Amendment 39–21185 (85 FR 47013, August 4, 2020) (AD 2020–16–01).

(c) Applicability

This AD applies to all Airbus SAS airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire protection; 52, Doors.

(e) Reason

This AD was prompted by reports of low halon concentration in the forward and aft cargo compartments due to air leakage through cargo door seals, and the certification of improved cargo door seals. The FAA is issuing this AD to address low halon concentration, which could affect the fire extinguishing system efficiency in the cargo compartments and possibly result in failure of the system to contain a cargo compartment fire.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0049, dated February 18, 2021 (EASA AD 2021–0049).

(h) Exceptions to EASA AD 2021–0049

(1) Where EASA AD 2021–0049 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (1) of EASA AD 2021–0049 refers to June 20, 2020 (the effective date of EASA AD 2020–0133, dated June 10, 2020), this AD requires using August 19, 2020 (the effective date of AD 2020–16–01). However, operators only need to show compliance with this AD for the cleaning and greasing actions required by paragraph (1) of EASA AD 2021–0049 that are accomplished on or after the effective date of this AD. As of the effective date of this AD, operators do not need to show compliance with the cleaning and greasing actions required by AD 2020–16–01 for any cargo door seal having part number (p/n) D5237106020000, D5237106020200, D5237106020400, D5237300120000, or D5237300120200; or

any bulk cargo door seals having p/n D5237200220000 or D5237200220200, as those actions are now required by paragraph (1) of EASA AD 2021–0049.

(3) Where paragraph (4) of EASA AD 2021–0049 specifies amending the aircraft flight manual (AFM) and ''operating that aeroplane accordingly,'' this AD does not include a requirement for ''operating that aeroplane accordingly'' as that action is already required by existing FAA operating regulations.

(4) Paragraph (4) of EASA AD 2021–0049 specifies amending ''the Aircraft Flight Manual (AFM) of the aeroplane,'' however, this AD requires amending ''the existing AFM and applicable corresponding operational procedures.'' Inserting a copy of EASA AD 2021–0049 into the existing AFM and applicable corresponding operational procedures is an acceptable method to comply with this requirement.

(5) The ''Remarks'' section of EASA AD 2021–0049 does not apply to this AD.

(i) Terminating Action for AD 2020–16–01

Accomplishing the terminating action on an airplane, as specified in paragraph (6) of EASA AD 2021–0049, for the affected parts defined in EASA AD 2021–0049 terminates all requirements of AD 2020–16–01 for forward and aft cargo door seals having part number (p/n) D5237106020000, D5237106020200, D5237106020400, D5237300120000, or D5237300120200; and bulk cargo door seals having p/n D5237200220000 or D5237200220200 only.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2021–0049 that contains RC procedures and tests: Except as required by paragraph (j)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

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

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0049, dated February 18, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0049, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0368.

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

Issued on August 19, 2021.

Gaetano A. Sciortino,

Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–19816 Filed 9–14–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0698; Project Identifier MCAI–2021–00284–T; Amendment 39–21703; AD 2021–18–02]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Fokker Services B.V. Model F28 Mark 0070 and Mark 0100 airplanes. This AD was prompted by a report of a crack found on the forward pressure bulkhead web plate, at the edge of a bonded doubler. This AD requires a one-time inspection of the forward bulkhead for cracking, repair if necessary, and a report of inspection results, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective September 30, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 30, 2021.

The FAA must receive comments on this AD by November 1, 2021.

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

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For the material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; 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, Transport Standards 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 at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0698.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0698; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Ho-Joon Lim, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3405; email *ho-joon.lim@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0064 dated March 5, 2021, to correct an unsafe condition for certain Fokker Services B.V. Model F28 Mark 0070 and Mark 0100 airplanes.

This AD was prompted by a report of a crack found on the forward pressure bulkhead web plate, at the edge of a bonded doubler of a Model F28 Mark 0070. The airplane had accumulated approximately 37,000 total flight cycles at the time of the finding. The threshold for the applicable Airworthiness Limitations Section (ALS) inspection task is currently 60,000 flight cycles. The FAA is issuing this AD to address cracking of the forward pressure bulkhead, which could result in reduced structural integrity and consequent rapid decompression of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0064 describes procedures for a one-time detailed inspection of the forward bulkhead for cracking, a report of inspection results, and repair of any crack found. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2021–0064 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this 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 2021–0064 is incorporated by reference in this AD. This AD, therefore, requires compliance with EASA AD 2021–0064 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0064 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 2021–0064. Service information specified in EASA AD 2021–0064 that is required for compliance with it is available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0698.

FAA's Justification and Determination of the Effective Date

There are currently no domestic operators of these products. Therefore, the FAA finds that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0698; Project Identifier MCAI–2021–00284–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Ho-Joon Lim, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3405; email *ho-joon.lim@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.

Regulatory Flexibility Act (RFA)

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

Interim Action

The FAA considers this AD interim action. If final action is later identified, the FAA may consider further rulemaking at that time.

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. For any affected airplane that may be imported and placed on the U.S. Register in the future, the FAA provides the following cost estimates to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product
8 work-hours × $85 per hour = $255	$0	$680

* Table does not include estimated costs for reporting.

The FAA estimates that it takes about 1 work-hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting the inspection results on U.S. operators to be $85 per product.

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition actions specified in this AD.

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 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 control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–18–02 Fokker Services B.V.: Amendment 39–21703; Docket No. FAA–2021–0698; Project Identifier MCAI–2021–00284–T.

(a) Effective Date

This airworthiness directive (AD) becomes effective September 30, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fokker Services B.V. Model F28 Mark 0070 and Mark 0100 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2021–0064, dated March 5, 2021.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by a report of a crack found on the forward pressure bulkhead web plate, at the edge of a bonded doubler. The FAA is issuing this AD to address cracking of the forward pressure bulkhead, which could result in reduced structural integrity and consequent rapid decompression 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, EASA AD 2021–0064.

(h) Exceptions to EASA AD 2021–0064

(1) Where EASA AD 2021–0064 refers to its effective date, this AD requires using the effective date of this AD.

(2) Paragraph (3) of EASA AD 2021–0064 specifies to report inspection results to Fokker Services within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(2)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(3) The ''Remarks'' section of EASA AD 2021–0064 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) 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 Fokker Services B.V.'s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Paperwork Reduction Act Burden Statement:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be 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 as required by this AD. 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.

(j) Related Information

For more information about this AD, contact Ho-Joon Lim, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3405; email *ho-joon.lim@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0064, dated March 5, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0064, 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.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0698.

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

Issued on August 18, 2021.

Ross Landes,

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

[FR Doc. 2021–19817 Filed 9–14–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

[Docket No. USPC–2021–04]

RIN 1104–AA09

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The United States Parole Commission is revising its regulations to permit findings by a Residential Reentry Center's Disciplinary Committee to be used as conclusive evidence of prisoner misconduct while in a Residential Reentry Center.

DATES: This regulation is effective September 15, 2021. Comments due on or before November 15, 2021.

ADDRESSES: Submit your comments, identified by docket identification number USPC–2021–04 by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.

2. *Mail:* Office of the General Counsel, U.S. Parole Commission, attention: USPC Rules Group, 90 K Street NE, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Helen H. Krapels, General Counsel, U.S. Parole Commission, 90 K Street NE, Third Floor, Washington, DC 20530, telephone (202) 346–7030. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: After the U.S. Parole Commission has granted a prisoner a parole effective date, but before the prisoner signed the parole certificate, if the prisoner violates the rules of the institution, the Parole Commission may reopen the case and schedule a rescission hearing. 28 CFR 2.34(a). At that hearing, the Parole Commission may consider the report of the Bureau of Prisons (''BOP'') Disciplinary Hearing Officer (''DHO'') following a disciplinary hearing, that a prisoner has violated disciplinary rules as ''conclusive evidence of institutional misconduct,'' and does not need to conduct a full hearing to consider witnesses and evidence. 28 CFR 2.34(c). The disciplinary hearing conducted by the DHO complies with the procedural due process requirements established by the Supreme Court in *Wolff* v. *McDonnell, i.e.,* the prisoner has notice of the alleged violations at least 24 hours in advance of hearing, a statement of factfinding, the right to call witnesses and present documentary evidence. Thus, the Parole Commission may rely on the findings and conclusions of the DHO to take action in response to the information.

For prisoners who are housed at a Residential Reentry Center (''RRC'') prior to their release and violate the rules, the in-person disciplinary hearing is conducted before the RRC's Center Disciplinary Committee (''CDC''). Under the BOP's Program Statement 7300.09, the CDC then refers its findings to the DHO for review, final action, and sanctions. Every court which has examined the procedures established by Program Statement 7300.09 has held that hearing procedures used by the CDC satisfy the procedural due process requirements established by the Supreme Court in *Wolff* v. *McDonnell.*

Thus far, the Parole Commission has not taken the step to amend its

regulation to include findings of the CDC after a hearing as conclusive evidence that the prisoner violated the rules of the institution. With more and more prisoners being placed in RRC's before their parole dates, it is critical that the Commission be able to rely on the CDC's findings to promote the smooth transition to the community or to pull back an inmate who has demonstrated that he or she is not ready to be released to the community without requiring a second hearing by the DHO or a fully contested disciplinary hearing conducted by the U.S. Parole Commission.

The Parole Commission is promulgating this rule as an interim rule and is providing a 60-day period for public comment. The amended rule will take effect upon publication in the **Federal Register**.

Executive Orders 12866 and 13563

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulation Planning and Review,'' section 1(b), Principles of Regulation, and in accordance with Executive Order 13565, ''Improving Regulation and Regulatory Review,'' section 1(b), General Principles of Regulation. The Commission has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

This rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local, or tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E—Congressional Review Act)

This rule is not a ''major rule'' as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E—Congressional Review Act, now codified at 5 U.S.C. 804(2). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, this is a rule of agency practice or procedure that does not substantially affect the rights or obligations of non-agency parties, and does not come within the meaning of the term ''rule'' as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Interim Rule

Accordingly, the U.S. Parole Commission amends 28 CFR part 2 as follows:

PART 2—[AMENDED]

■ 1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

■ 2. Amend § 2.34 by revising paragraphs (a) and (c) to read as follows:

§ 2.34 Rescission of parole.

(a) When an effective date of parole has been set by the Commission, release on that date is conditioned upon continued satisfactory conduct by the prisoner. If a prisoner granted such a date has been found in violation of institution rules by a Discipline Hearing Officer, or the Center Disciplinary Committee, or is alleged to have committed a new criminal act at any time prior to the delivery of the certificate of parole, the Commissioner shall be advised promptly of such information. The prisoner shall not be released until the institution has been notified that no change has been made in the Commission's order to parole. Following receipt of such information, the Commissioner may reopen the case and retard the parole date for up to 90 days without a hearing, or schedule a rescission hearing under this section on the next available docket at the institution or on the first docket following return to a federal institution from a community corrections center or a state or local halfway house.

* * * * *

(c) A hearing before a Discipline Hearing Officer, or the Center Disciplinary Committee, resulting in a finding that the prisoner has committed a violation of disciplinary rules may be relied upon by the Commission as conclusive evidence of institutional misconduct. However, the prisoner will be afforded an opportunity to explain any mitigating circumstances, and to present documentary evidence in mitigation of the misconduct at the rescission hearing.

* * * * *

Patricia K. Cushwa,

Chairman (Acting), U.S. Parole Commission.

[FR Doc. 2021–19885 Filed 9–14–21; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

[Docket No. USPC–2021–05]

RIN 1104–AA10

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The United States Parole Commission is adopting a final rule to conform with the District of Columbia Council's amendment to medical and geriatric parole law which removed an exception that excluded prisoners convicted of certain violent offenses from medical parole consideration.

DATES: Effective September 15, 2021.

FOR FURTHER INFORMATION CONTACT: Helen H. Krapels, General Counsel, U.S. Parole Commission, 90 K Street NE, Third Floor, Washington, DC 20530, telephone (202) 346–7030. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION:

Background: The U.S. Parole Commission is responsible for medical parole release decisions for District of

Columbia felony offenders who are eligible for parole. The Commission took over this responsibility on August 5, 1998 as a result of the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33. 11231(a)(1), 111 Stat. 712, 745 (effective August 5, 1998). The Commission's new duties included medical parole determinations for D.C. offenders previously made by the D.C. Board of Parole pursuant to the Medical and Geriatric Parole Act of 1992, D.C. Law 9–271; D.C. Official Code 24–461, *et seq.* (effective May 15, 1993).

The Commission promptly enacted regulations to implement its new duties, which included the rule that set forth criteria and procedures for implementing the medical parole provisions in D.C. Code 24–261–64, 267 at 28 CFR 2.77. 63 FR 39172–39183 (July 21, 1998). Regulation 28 CFR 2.77 governs the Commission's decision to release a D.C. prisoner on medical parole. The Commission exercises its discretion to grant medical parole to eligible prisoners on the basis of either terminal illness or permanent and irreversible incapacitation if the Commission determines the prisoner meets certain eligibility criteria. Originally, prisoners convicted of certain violent offenses were excluded from benefits of medical parole. (D.C. Law 9–271; D.C. Official Code 24–467.)

In 2012, the D.C. Council amended D.C. Code 24–267 when it approved the Compassionate Release Authorization Amendment Act of 2012, D.C. Law 19–318 (Act 19–479). D.C. Law 19–318 rewrote section 24–467, which formerly read: ''Persons convicted of first degree murder or persons sentenced for crimes committed when armed under 22–4502, or under 22–4504(b), and 22–2803, shall not be eligible for geriatric or medical parole.'' Effective June 15, 2013, D.C. Law 19–318 removed the exception for medical parole.

The Revitalization Act requires the Commission to follow District of Columbia parole law and regulations and authorizes the Commission to ''amend or supplement'' the parole regulations of the District of Columbia as it sees fit. See D.C. Code 24–1231(a)(1)(2001). As part of that authority, the Parole Commission has decided to update its regulation in light of the change in D.C. law that relates to the medical parole exception by promulgating a final rule to amend 28 CFR 2.77 to remove paragraph (g)(1). As a result, prisoners convicted of certain violent offenses will not be excluded from the benefit of medical parole and 28 CFR 2.77 will comport with current D.C. law. See D.C. Code 24–267.

The rule change does not impact the sole discretion and jurisdiction of the Commission to grant medical parole. See D.C. Code 24–1231(a)(1)(2001); D.C. Code 24–463. Following the rule change, the Commission will still consider whether to exercise its discretion to grant medical parole for those prisoners previously excluded from medical parole as it will any other prisoner.

Because this action is being taken to conform with a change in D.C. statute, it is being published as a final rule.

Executive Orders 12866 and 13563

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulation Planning and Review,'' section 1(b), Principles of Regulation, and in accordance with Executive Order 13565, ''Improving Regulation and Regulatory Review,'' section 1(b), General Principles of Regulation. The Commission has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

This rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local, or tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E—Congressional Review Act)

This rule is not a ''major rule'' as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E—Congressional Review Act, now codified at 5 U.S.C. 804(2). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, this is a rule of agency practice or procedure that does not substantially affect the rights or obligations of non-agency parties, and does not come within the meaning of the term ''rule'' as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Final Rule

Accordingly, the U.S. Parole Commission amends 28 CFR part 2 as follows:

PART 2—[AMENDED]

■ 1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

■ 2. Revise § 2.77(g) to read as follows:

§ 2.77 Medical parole.

* * * * *

(g) Notwithstanding any other provision of this section, a prisoner shall not be eligible for medical parole on the basis of a physical or medical condition that existed at the time the prisoner was sentenced (D.C. Code 24–462).

Patricia K. Cushwa,

Chairman (Acting), U.S. Parole Commission.

[FR Doc. 2021–19884 Filed 9–14–21; 8:45 am]

BILLING CODE 4410–31–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in

Single-Employer Plans to prescribe interest assumptions under the asset allocation regulation for plans with valuation dates in the fourth quarter of 2021. These interest assumptions are used for valuing benefits under terminating single-employer plans and for other purposes.

DATES: Effective October 1, 2021.

FOR FURTHER INFORMATION CONTACT: Hilary Duke (*duke.hilary@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005, 202–229–3839. (TTY users may call the Federal relay service toll free at 1–800–877–8339 and ask to be connected to 202–229–3839.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions—including interest assumptions—for valuing benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The interest assumptions in the regulation are also published on PBGC's website (*https://www.pbgc.gov*).

PBGC uses the interest assumptions in appendix B to part 4044 (''Interest Rates Used to Value Benefits'') to determine the present value of annuities in an involuntary or distress termination of a single-employer plan under the asset allocation regulation. The assumptions are also used to determine the value of multiemployer plan benefits and certain assets when a plan terminates by mass withdrawal in accordance with PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281).

The fourth quarter 2021 interest assumptions will be 2.40 percent for the first 20 years following the valuation date and 2.11 percent thereafter. In comparison with the interest assumptions in effect for the third quarter of 2021, these interest assumptions represent a decrease of 5 years in the select period (the period during which the select rate (the initial rate) applies), an increase of 0.27 percent in the select rate, and a decrease of 0.12 percent in the ultimate rate (the final rate).

Need for Immediate Guidance

PBGC has determined that notice of, and public comment on, this rule are impracticable, unnecessary, and contrary to the public interest. PBGC routinely updates the interest assumptions in appendix B of the asset allocation regulation each quarter so that they are available to value benefits. Accordingly, PBGC finds that the public interest is best served by issuing this rule expeditiously, without an opportunity for notice and comment, and that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication to allow the use of the proper assumptions to estimate the value of plan benefits for plans with valuation dates early in the fourth quarter of 2021.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 2. In appendix B to part 4044, add an entry for ''October–December 2021'' at the end of the table to read as follows:

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*		*	*		*
October–December 2021	0.0240	1–20	0.0211	>20	N/A	N/A

Issued in Washington, DC, by

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2021–19704 Filed 9–14–21; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 8a and 36

RIN 2900–AR09

Nomenclature Change for Position Title

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs is amending its regulations to revise the title of the ''Director, Loan Guaranty Service'' to ''Executive Director, Loan Guaranty Service'' and to remove references to the position of ''Deputy Under Secretary for Economic Opportunity.'' These amendments reflect current agency organizational structure and are necessary to ensure consistency between the agency and its regulations.

DATES: This rule is effective September 15, 2021.

FOR FURTHER INFORMATION CONTACT: Stephanie Li, Chief of Regulations, Loan Guaranty Service, (26A), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–8862. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: A number of VA regulations reference the ''Director, Loan Guaranty Service'', but the title for this position has been amended from ''Director, Loan Guaranty Service'' to ''Executive Director, Loan Guaranty Service.'' Also, certain VA regulations reference the ''Deputy Under Secretary for Economic Opportunity,'' but that position has been eliminated within the Veterans Benefits Administration. To ensure accuracy and consistency between the agency and its regulations, this final rule revises VA regulations to reflect this nomenclature change and organizational structure.

Additionally, VA notes that there is a technical drafting error at

§ 36.4345(b)(1) in which paragraph level (iv) is used twice. This final rule corrects that error.

Administrative Procedure Act

This final rule concerns only agency organization, procedure, or practice and, therefore, is not subject to the notice and comment provisions of 5 U.S.C. 553(b). See 38 U.S.C. 553(b)(A). Specifically, this final rule consists of amendments reflecting agency organization, revising the title of one position and removing the reference to another eliminated position. VA has also determined that there is good cause to make this final rule effective on the date of publication under 5 U.S.C. 553(d)(3). As the agency has already adapted to the above noted organizational amendments, delaying the effective date is unnecessary.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), imposes certain requirements on Federal agency rules that are subject to the notice and comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553(b). This final rule pertains to agency organization, which the APA expressly exempts from notice and comment rulemaking requirements under 5 U.S.C. 553(b)(A). Therefore, the requirements of the RFA applicable to notice and comment rulemaking do not apply to this rule. Accordingly, the Department is not required either to certify that the final rule would not have a significant economic impact on a substantial number of small entities or to conduct a regulatory flexibility analysis.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.106, Specially Adapted Housing For Disabled Veterans; 64.114, Veterans Housing Guaranteed and Insured Loans; 64.118, Veterans Housing Direct Loans for Certain Disabled Veterans; and 64.126, Native American Veteran Direct Loan Program.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as 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).

List of Subjects

38 CFR Part 8a

Life insurance, Mortgage insurance, Veterans.

38 CFR Part 36

Condominiums, Housing, Individuals with disabilities, Loan programs—housing and community development, Loan programs—Indians, Loan programs—veterans, Manufactured homes, Mortgage insurance, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on September 2, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR parts 8a and 36 as set forth below:

PART 8A—VETERANS MORTGAGE LIFE INSURANCE

■ 1. The authority citation for part 8a continues to read as follows:

Authority: 38 U.S.C. 501, and 2101 through 2016, unless otherwise noted.

§ 8a.1 [Amended]

■ 2. In § 8a.1 amend paragraph (e)(3) by removing the words ''Director, Loan Guaranty Service'' and adding, in their place, the words ''Executive Director, Loan Guaranty Service''.

PART 36—LOAN GUARANTY

■ 3. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501 and 3720.

PART 36 [Amended]

■ 4. Amend part 36 by removing the words ''Director, Loan Guaranty Service'' wherever they appear, and adding, in their place, the words ''Executive Director, Loan Guaranty Service''.

§ 36.4221 [Amended]

■ 5. In § 36.4221 amend paragraph (d) by removing the word ''Director'' and adding, in its place, the words ''Director or Executive Director''.

§ 36.4345 [Amended]

■ 6. Amend § 36.4345 by:
■ a. Removing paragraph (b)(1)(iii);
■ b. Redesignating the first paragraph (b)(1)(iv) as paragraph (b)(1)(iii);
■ c. Removing the word ''Director'' in paragraph (d), and adding, in its place, the words ''Director or Executive Director''; and
■ d. In paragraphs (e)(3) and (f)(3) removing the words ''Office of the Director of VA Loan Guaranty Service'' and adding, in their place, the words ''Office of the Executive Director, Loan Guaranty Service''.

§ 36.4412 [Amended]

■ 7. Amend § 36.4412 by:
■ a. Removing paragraph (i)(1)(ii); and

■ b. Redesignating paragraphs (i)(1)(iii) and (iv) as paragraphs (i)(1)(ii) and (iii), respectively.

§ 36.4520 [Amended]

■ 8. In § 36.4520 by amend paragraph (d), removing the word ''Director'' and adding, in its place, the words ''Director or Executive Director''.

§ 36.4527 [Amended]

■ 9. In § 36.4527 amend paragraph (j)(4) by removing the word ''Director'' and adding, in its place, the words ''Director or Executive Director''.

[FR Doc. 2021–19793 Filed 9–14–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100217095–2081–04; RTID 0648–XB410]

Reef Fish Fishery of the Gulf of Mexico; 2021 Recreational Accountability Measure and Closure for Gulf of Mexico Red Grouper

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) for the red grouper recreational sector in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) for the 2021 fishing year through this temporary rule. NMFS has projected that the 2021 recreational annual catch limit (ACL) for Gulf red grouper has been met. Therefore, NMFS closes the recreational sector for Gulf red grouper on September 15, 2021, and it will remain closed through the end of the fishing year on December 31, 2021. This closure is necessary to protect the Gulf red grouper resource.

DATES: This temporary rule is effective from 12:01 a.m., local time, on September 15, 2021, until 12:01 a.m., local time, on January 1, 2022.

FOR FURTHER INFORMATION CONTACT: Dan Luers, NMFS Southeast Regional Office, telephone: 727–551–5719, email: *daniel.luers@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS manages the Gulf reef fish fishery, which includes red grouper, under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) through regulations at 50 CFR part 622. All red grouper weights discussed in this temporary rule are in gutted weight.

The recreational ACL for Gulf red grouper is 1,000,000 lb (450,000 kg), and the recreational annual catch target (ACT) is 920,000 lb (420,000 kg) (50 CFR 622.41(e)(2)(iv)).

As specified in 50 CFR 622.41(e)(2)(i), NMFS is required to close the recreational sector for red grouper when the recreational ACL is reached or is projected to be reached by filing a notification to that effect with the Office of the Federal Register. Based on information received on September 1, 2021, NMFS has determined the 2021 recreational ACL for Gulf red grouper was met as of June 30, 2021. Accordingly, this temporary rule closes the recreational sector for Gulf red grouper effective at 12:01 a.m., local time, on September 15, 2021, and it will remain closed through the end of the fishing year on December 31, 2021.

During the recreational closure, the bag and possession limits for red grouper in or from the Gulf EEZ are zero. The prohibition on possession of Gulf red grouper also applies in Gulf state waters for any vessel issued a valid Federal charter vessel/headboat permit for Gulf reef fish.

Because the 2021 recreational ACL for Gulf red grouper has been exceeded, NMFS will file a notice with the Office of the Federal Register to reduce the length of the 2022 Gulf recreational red grouper fishing season by the amount necessary to ensure Gulf red grouper recreational landings in 2022 do not exceed the recreational ACT (50 CFR 622.41(e)(2)(ii).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.41(e)(2)(i), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulations associated with the closure of the red grouper recreational sector at 50 CFR 622.41(e)(2)(i) have already been subject to notice and public comment, and all that remains is to notify the public of the closure. Prior notice and opportunity for public comment are contrary to the public interest because there is a need to immediately implement this action to protect the red grouper stock. The recreational ACL for red grouper has already been exceeded. Prior notice and opportunity for public comment would require time and could result in a harvest well in excess of the established ACL.

For the aforementioned reasons, the Assistant Administrator also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 9, 2021.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–19825 Filed 9–10–21; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 121004518–3398–01; RTID 0648–XB415]

Reef Fish Fishery of the Gulf of Mexico; 2021 Recreational Accountability Measure and Closure for Gulf of Mexico Gray Triggerfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements an accountability measure (AM) for the gray triggerfish recreational sector in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) for the 2021 fishing year through this temporary rule. NMFS has projected that the 2021 recreational annual catch target (ACT) for Gulf gray triggerfish will be reached by September 10, 2021. However, because there is uncertainty in the projection and to provide additional notice to fishery participants, NMFS closes the recreational sector for Gulf gray triggerfish on September 15, 2021, and it will remain closed through the end of the fishing year on December 31, 2021. This closure is necessary to protect the Gulf gray triggerfish resource.

DATES: This temporary rule is effective from 12:01 a.m., local time, on September 15, 2021, until 12:01 a.m., local time, on January 1, 2022.

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, NMFS Southeast Regional Office, telephone: 727–551–5719, email: *Kelli.ODonnell@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS manages the Gulf reef fish fishery, which includes gray triggerfish, under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) through regulations at 50 CFR part 622. All gray triggerfish weights discussed in this temporary rule are in round weight.

The recreational annual catch limit (ACL) for Gulf gray triggerfish is 360,951 lb (163,725 kg), and the recreational ACT is 274,323 lb (124,431 kg) (50 CFR 622.41(b)(2)(iii)).

As specified in 50 CFR 622.41(b)(2)(i), NMFS is required to close the recreational sector for gray triggerfish when the recreational ACT is reached or is projected to be reached by filing a notification to that effect with the Office of the Federal Register. NMFS has determined the 2021 recreational ACT for Gulf gray triggerfish will be reached by September 10, 2021. However, because NMFS is relying on projected landings for August and September 2021 there is some uncertainty in this estimate. Therefore, NMFS is providing additional notice to fishery participants. Accordingly, this temporary rule closes the recreational sector for Gulf gray triggerfish effective at 12:01 a.m., local time, on September 15, 2021, and it will remain closed through the end of the fishing year on December 31, 2021.

During the recreational closure, the bag and possession limits for gray triggerfish in or from the Gulf EEZ are zero. The prohibition on possession of Gulf gray triggerfish also applies in Gulf state waters for any vessel issued a valid Federal charter vessel/headboat permit for Gulf reef fish.

Additionally, as specified in 50 CFR 622.34(f), there is a seasonal closure for Gulf gray triggerfish at the beginning of each fishing year from January 1 through the end of February. Therefore, after the closure implemented by this temporary rule becomes effective on September 15, 2021, the recreational harvest or possession of Gulf gray triggerfish will be prohibited until March 1, 2022.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.41(b)(2)(i), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulations associated with the closure of the gray triggerfish recreational sector at 50 CFR 622.41(b)(2)(i) have already been subject to notice and public comment, and all that remains is to notify the public of the closure. Prior notice and opportunity for public comment are contrary to the public interest because there is a need to immediately implement this action to protect the gray triggerfish stock. Prior notice and opportunity for public comment would require more time and potentially allow the recreational sector to exceed the recreational ACL.

For the aforementioned reasons, the Assistant Administrator also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 9, 2021.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–19823 Filed 9–10–21; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 210520–0112; RTID 0648–XB409]

Fisheries of the Northeastern United States; Blueline Tilefish Fishery; Inseason Adjustment to the Blueline Tilefish Commercial Possession Limit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS announces that the commercial per-trip possession limit for blueline tilefish has been reduced for the remainder of the 2021 fishing year. This announcement informs the public of the reduced blueline tilefish possession limit. This action is intended to prevent over-harvest of blueline tilefish for the fishing year.

DATES: Effective September 10, 2021, though, December 31, 2021.

FOR FURTHER INFORMATION CONTACT: Laura Hansen, Fishery Management Specialist, (978) 281–9225.

SUPPLEMENTARY INFORMATION: Regulations for the blueline tilefish fishery are at 50 CFR part 648. The regulations at § 648.295(b)(2)(i) require that when NMFS projects that blueline tilefish catch will reach 70 percent of the total allowable landings (TAL), the Regional Administrator must reduce the possession limit for the commercial blueline tilefish fishery for the remainder of the fishing year or until 100 percent of the TAL is landed. The possession limit is reduced from 500 lb to 300 lb per trip in the Tilefish Management Unit. Fish must have head and fins attached, but may be gutted. NMFS monitors the blueline tilefish fishery catch based on dealer reports, state data, and other available information.

The Regional Administrator has determined, based on dealer reports and other available information, that the blueline tilefish commercial fishery will catch 70 percent of the TAL by September 3, 2021. Upon filing this action in the **Federal Register**, vessels may not may possess on board or land more than 300 lb per trip of blueline tilefish in or from the Tilefish Management Unit through December 31, 2021.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 648, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

NMFS finds good cause pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3) to waive prior notice and the opportunity for public comment and the delayed effectiveness period because it would be contrary to the public interest and impracticable. Data and other information indicating the blueline tilefish commercial fishery will have landed 70 percent of the TAL have only recently become available. Landings data are updated by dealer reports on a weekly basis, and NMFS monitors data as catch increases toward the limit. This action is routine and formulaic. The regulations at § 648.295(b)(2)(i) require

such action to ensure that blueline tilefish commercial vessels do not exceed the 2021 TAL. If implementation of this action is delayed, the TAL for the 2021 fishing year may be exceeded, thereby undermining the conservation objectives of the Tilefish Fishery Management Plan. Also, the public had prior notice and full opportunity to comment on this process when the provisions regarding inseason adjustments and the 2021 quota levels were put in place.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 9, 2021.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–19834 Filed 9–10–21; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 86, No. 176
Wednesday, September 15, 2021

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0787; Project Identifier MCAI–2021–00252–T]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., 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 Bombardier, Inc., Model CL–600–1A11 (600), CL–600–2A12 (601), and CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes. This proposed AD was prompted by a report of a wing stall (wing drop/un-commanded roll) during a landing flare. This proposed AD would require revising the existing airplane flight manual (AFM) to incorporate a limitation and procedure for the wing anti-ice (WAI) system in order to mitigate the risk of ice accumulation on the wing leading edges. 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 November 1, 2021.

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

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.com.* You may view this service information 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.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0787; 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: Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@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–2021–0787; Project Identifier MCAI–2021–00252–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 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 Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@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

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2021–06, dated February 26, 2021 (TCCA AD CF–2021–06) (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Bombardier, Inc., Model CL–600–1A11 (600), CL–600–2A12 (601), and CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes. You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0787.

This proposed AD was prompted by a report of a wing stall (wing drop/un-commanded roll) during a landing flare. Photographs after landing showed that the airplane had mixed ice on the leading edges of the wings; therefore, it was determined that during descent the

WAI system had been OFF because the ice detector did not detect ice. Post-incident functional checks of the ice detectors revealed no faults with the ice detector units onboard the aircraft. After the investigation, it was revealed that the flightcrew had followed the AFM procedures, which did not require the WAI system to be selected ON. The FAA is proposing this AD to address ice accumulation on the wing leading edges, which could result in a wing stall during landing and consequent reduced controllability of the airplane. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information, which specifies a revised AFM limitation and procedure for the WAI system in order to mitigate the risk of ice accumulation on the wing leading edge. These documents are distinct since they apply to different airplane configurations.

- Sub-sub section (2), Wing Anti-ice System, of sub-section I., Operation in Icing Conditions, of Chapter 3., OPERATION LIMITATIONS, of the LIMITATIONS section; and sub-section C., Icing Conditions During Flight, of Chapter 3., SYSTEMS OPERATIONS—ANTI-ICE, and sub-section I., Before Landing, of Chapter 42., CONSOLIDATED CHECK LIST, of NORMAL PROCEDURES section; of Canadair Challenger CL–600–1A11 AFM, Product Publication 600, Revision 114, dated April 16, 2020.
- Sub-sub section (2), Wing Anti-ice System, of sub-section I., Operation in Icing Conditions, of Chapter 4., OPERATION LIMITATIONS, of the LIMITATIONS section; and sub-section C., Icing Conditions During Flight, of Chapter 4., SYSTEMS OPERATIONS—ANTI-ICE, and sub-section I., Before Landing, of Chapter 23., CONSOLIDATED CHECK LIST, of the NORMAL PROCEDURES section; of Canadair Challenger CL–600–1A11 AFM, Product Support Publication (PSP) 600–1, Revision 106, dated April 16, 2020.
- Sub-sub section (2), Wing Anti-ice System, of sub-section I., Operation in Icing Conditions, of Chapter 3., OPERATING LIMITATIONS, of the LIMITATIONS section; and sub-section E., Icing Conditions During Flight, of Chapter 4., SYSTEMS OPERATIONS—ANTI-ICE, of the NORMAL PROCEDURES section; of Canadair Challenger CL–600–2A12 AFM, PSP 601–1A, Revision 123, dated April 16, 2020.
- Sub-sub section (2), Wing Anti-ice System, of sub-section I., Operation in Icing Conditions, of Chapter 3., OPERATING LIMITATIONS, of the LIMITATIONS section; and sub-section E., Icing Conditions During Flight, of Chapter 4., SYSTEMS OPERATIONS—ANTI-ICE, of the NORMAL PROCEDURES section; of Canadair Challenger CL–600–2A12 AFM, PSP 601–1A–1, Revision 82, dated April 16, 2020.
- Sub-sub section (2), Wing Anti-ice System, of sub-section I., Operation in Icing Conditions, of Chapter 3., OPERATING LIMITATIONS, of the LIMITATIONS section; and sub-section E., Icing Conditions During Flight, of Chapter 4., SYSTEMS OPERATIONS—ANTI-ICE, of the NORMAL PROCEDURES section; of Canadair Challenger CL–600–2A12 AFM, PSP 601–1B, Revision 86, dated April 16, 2020.
- Sub-sub section (2), Wing Anti-ice System, of sub-section I., Operation in Icing Conditions, of Chapter 3., OPERATING LIMITATIONS, of the LIMITATIONS section; and sub-section E., Icing Conditions During Flight, of Chapter 4., SYSTEMS OPERATIONS—ANTI-ICE, of the NORMAL PROCEDURES section; of Canadair Challenger CL–600–2A12 AFM, PSP 601–1B–1, Revision 84, dated April 16, 2020.
- Sub-sub section (2), Wing Anti-ice System, of sub-section I., Operation in Icing Conditions, of Chapter 3., OPERATING LIMITATIONS, of the LIMITATIONS section; and sub-section E., Icing Conditions During Flight, of Chapter 4., SYSTEMS OPERATIONS—ANTI-ICE, of the NORMAL PROCEDURES section; of Canadair Challenger CL–600–2B16 AFM, PSP 601A–1, Revision 106, dated April 16, 2020.
- Sub-sub section (2), Wing Anti-ice System, of sub-section I., Operation in Icing Conditions, of Chapter 3., OPERATING LIMITATIONS, of the LIMITATIONS section; and sub-section E., Icing Conditions During Flight, of Chapter 4., SYSTEMS OPERATIONS—ANTI-ICE, of the NORMAL PROCEDURES section; of Canadair Challenger CL–600–2B16 AFM, PSP 601A–1–1, Revision 95, dated April 16, 2020.
- Sub-sub section B., Wing Anti-ice System, of sub-section 4., Operation in Icing Conditions, of Section 02–04, Operating Limitations, of Chapter 2—LIMITATIONS; and sub-section M., Icing Conditions During Flight, of Section 04–14, Ice and Rain Protection, of Chapter 4—NORMAL PROCEDURES; of Bombardier Challenger 604 CL–600–2B16 AFM, PSP 604–1, Revision 116, dated December 18, 2019.
- Sub-sub section B., Wing Anti-ice System, of sub-section 4., Operation in Icing Conditions, of Section 02–04, Operating Limitations, of Chapter 2—LIMITATIONS; and sub-section M., Icing Conditions During Flight, of Section 04–14, Ice and Rain Protection, of Chapter 4—NORMAL PROCEDURES; of Bombardier Challenger 605 CL–600–2B16 AFM, PSP 605–1, Revision 54, dated December 18, 2019.
- Sub-sub section B., Wing Anti-ice System, of sub-section 4., Operation in Icing Conditions, of Section 02–04, Operating Limitations, of Chapter 2—LIMITATIONS; and sub-section M., Icing Conditions During Flight, of Section 04–14, Ice and Rain Protection, of Chapter 4—NORMAL PROCEDURES; of Bombardier Challenger 650 CL–600–2B16 AFM, PSP 650–1, Revision 19, dated December 18, 2019.

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 the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information 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 on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require revising the existing AFM to incorporate the limitations and procedures for the WAI system described previously, in order to mitigate the risk of ice accumulation on the wing leading edges, except as discussed under ''Differences Between this Proposed AD and the MCAI.''

Differences Between This Proposed AD and the MCAI

This NPRM updates certain AFM revision levels identified in TCCA AD CF–2021–06, and therefore identifies the complete, most recent service information that will be incorporated by reference in the final rule.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 619 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
1 work-hour × $85 per hour = $85	$0	$85	$52,615

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:

Bombardier, Inc.: Docket No. FAA–2021–0787; Project Identifier MCAI–2021–00252–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 1, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., airplanes, certificated in any category, as identified in paragraphs (c)(1) through (3) of this AD.

(1) Model CL–600–1A11 (600) airplanes having serial numbers (S/Ns) 1001 through 1085 inclusive.

(2) Model CL–600–2A12 (601) airplanes having S/Ns 3001 through 3066 inclusive.

(3) Model CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes having S/Ns 5001 through 5194 inclusive; 5301 through 5665 inclusive; 5701 through 5988 inclusive; and 6050 through 6153 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 30, Ice and Rain Protection.

(e) Unsafe Condition

This AD was prompted by a report of a wing stall during a landing flare. Photographs after landing showed that the airplane had mixed ice on the leading edges of the wings; therefore, it was determined that during descent the wing anti-ice (WAI) system had been OFF because the ice detector did not detect ice. The FAA is issuing this AD to address ice accumulation on the wing leading edges, which could result in a wing stall during landing and consequent reduced controllability of the airplane.

(f) Compliance

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

(g) Airplane Flight Manual (AFM) Revision

Within 60 days after the effective date of this AD: Revise the existing AFM to incorporate the specified sections of the Bombardier or Canadair Challenger AFM revision limitations and procedures for the WAI system specified in figure 1 to paragraph (g) of this AD.

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Figure 1 to paragraph (g) – *AFM Revisions*

Bombardier Airplane Model/Serial Number	**AFM Title**	**AFM Revision**
CL-600-1A11 (Variant 600), 1001 through 1085 inclusive for non-winglets	Sub-sub section (2), Wing Anti-ice System, of sub-section I., Operation in Icing Conditions, of Chapter 3., OPERATION LIMITATIONS, of the LIMITATIONS section; and sub-section C., Icing Conditions During Flight, of Chapter 3., SYSTEMS OPERATIONS – ANTI-ICE, and sub-section I., Before Landing, of Chapter 42., CONSOLIDATED CHECK LIST, of NORMAL PROCEDURES section; of Canadair Challenger CL-600-1A11 AFM, Product Publication 600	Revision 114, dated April 16, 2020
CL-600-1A11 (Variant 600), 1001 through 1085 inclusive for winglets	Sub-sub section (2), Wing Anti-ice System, of sub-section I., Operation in Icing Conditions, of Chapter 4., OPERATION LIMITATIONS, of the LIMITATIONS section; and sub-section C., Icing Conditions During Flight, of Chapter 4., SYSTEMS OPERATIONS – ANTI-ICE, and sub-section I., Before Landing, of Chapter 23., CONSOLIDATED CHECK LIST, of the NORMAL PROCEDURES section; of Canadair Challenger CL-600-1A11 AFM, Product Support Publication (PSP) 600-1	Revision 106, dated April 16, 2020
CL-600-2A12 (Variant 601), 3001 through 3066, and 43,100 lb. maximum take-off weight (MTOW)	Sub-sub section (2), Wing Anti-ice System, of sub-section I., Operation in Icing Conditions, of Chapter 3., OPERATING LIMITATIONS, of the LIMITATIONS section; and sub-section E., Icing Conditions During Flight, of Chapter 4., SYSTEMS OPERATIONS – ANTI-ICE, of the NORMAL PROCEDURES section; of Canadair Challenger CL-600-2A12 AFM, PSP 601-1A	Revision 123, dated April 16, 2020
CL-600-2A12 (Variant 601), 3001 through 3066, and 44,600 lb./45,100 lb. MTOW	Sub-sub section (2), Wing Anti-ice System, of sub-section I., Operation in Icing Conditions, of Chapter 3., OPERATING LIMITATIONS, of the LIMITATIONS section; and sub-section E., Icing Conditions During Flight, of Chapter 4., SYSTEMS OPERATIONS – ANTI-ICE, of the NORMAL PROCEDURES section; of Canadair Challenger CL-600-2A12 AFM, PSP 601-1A-1	Revision 82, dated April 16, 2020

Bombardier Airplane Model/Serial Number	AFM Title	AFM Revision
CL-600-2A12 (Variant 601), 3001 through 3066 with -3A engine, and 43,100 lb. MTOW	Sub-sub section (2), Wing Anti-ice System, of sub-section I., Operation in Icing Conditions, of Chapter 3., OPERATING LIMITATIONS, of the LIMITATIONS section; and sub-section E., Icing Conditions During Flight, of Chapter 4., SYSTEMS OPERATIONS – ANTI-ICE, of the NORMAL PROCEDURES section; of Canadair Challenger CL-600-2A12 AFM, PSP 601-1B	Revision 86, dated April 16, 2020
CL-600-2A12 (Variant 601), 3001 through 3066 with -3A engine, and 44,600 lb./45,100 lb. MTOW	Sub-sub section (2), Wing Anti-ice System, of sub-section I., Operation in Icing Conditions, of Chapter 3., OPERATING LIMITATIONS, of the LIMITATIONS section; and sub-section E., Icing Conditions During Flight, of Chapter 4., SYSTEMS OPERATIONS – ANTI-ICE, of the NORMAL PROCEDURES section; of Canadair Challenger CL-600-2A12 AFM, PSP 601-1B-1	Revision 84, dated April 16, 2020
CL-600-2B16 (Variant 601-3A/3R) 5001 through 5134 inclusive, and 43,100 lb. MTOW	Sub-sub section (2), Wing Anti-ice System, of sub-section I., Operation in Icing Conditions, of Chapter 3., OPERATING LIMITATIONS, of the LIMITATIONS section; and sub-section E., Icing Conditions During Flight, of Chapter 4., SYSTEMS OPERATIONS – ANTI-ICE, of the NORMAL PROCEDURES section; of Canadair Challenger CL-600-2B16 AFM, PSP 601A-1	Revision 106, dated April 16, 2020
CL-600-2B16 (Variant 601-3A/3R) 5001 through 5194 inclusive, and 44,600 lb./45,100 lb. MTOW	Sub-sub section (2), Wing Anti-ice System, of sub-section I., Operation in Icing Conditions, of Chapter 3., OPERATING LIMITATIONS, of the LIMITATIONS section; and sub-section E., Icing Conditions During Flight, of Chapter 4., SYSTEMS OPERATIONS – ANTI-ICE, of the NORMAL PROCEDURES section; of Canadair Challenger CL-600-2B16 AFM, PSP 601A-1-1	Revision 95, dated April 16, 2020
CL-600-2B16 (Variant 604) 5301 through 5665 inclusive	Sub-sub section B., Wing Anti-ice System, of sub-section 4., Operation in Icing Conditions, of Section 02-04, Operating Limitations, of Chapter 2 – LIMITATIONS; and sub-section M., Icing Conditions During Flight, of Section 04-14, Ice and Rain Protection, of Chapter 4 – NORMAL PROCEDURES; of Bombardier Challenger 604 CL-600-2B16 AFM, PSP 604-1	Revision 116, dated December 18, 2019

Bombardier Airplane Model/Serial Number	AFM Title	AFM Revision
CL-600-2B16 (Variant 604) 5701 through 5988 inclusive	Sub-sub section B., Wing Anti-ice System, of sub-section 4., Operation in Icing Conditions, of Section 02-04, Operating Limitations, of Chapter 2 – LIMITATIONS; and sub-section M., Icing Conditions During Flight, of Section 04-14, Ice and Rain Protection, of Chapter 4 – NORMAL PROCEDURES; of Bombardier Challenger 605 CL-600-2B16 AFM, PSP 605-1	Revision 54, dated December 18, 2019
CL-600-2B16 (Variant 604) 6050 through 6153 inclusive	Sub-sub section B., Wing Anti-ice System, of sub-section 4., Operation in Icing Conditions, of Section 02-04, Operating Limitations, of Chapter 2 – LIMITATIONS; and sub-section M., Icing Conditions During Flight, of Section 04-14, Ice and Rain Protection, of Chapter 4 – NORMAL PROCEDURES; of Bombardier Challenger 650 CL-600-2B16 AFM, PSP 650-1	Revision 19, dated December 18, 2019

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York 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 responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2021–06, dated February 26, 2021, for related information. This MCAI may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0787.

(2) For more information about this AD, contact Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

(3) For service information identified in this AD, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.com.* You may view this service information 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.

Issued on September 9, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–19814 Filed 9–14–21; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2520

RIN 1210–AB97

Annual Reporting and Disclosure

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This document contains proposed amendments to Department of Labor (DOL) regulations relating to annual reporting requirements under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The proposed amendments contained in this document would conform these DOL reporting regulations to proposed revisions under Title I of ERISA and the Internal Revenue Code (Code) to the Form 5500 Annual Return/Report of Employee Benefit Plan and Form 5500–SF Short Form Annual Return/Report of Small Employee Benefit Plan being published in this issue of the **Federal Register** in a separate Notice of Proposed Forms Revisions (NPFR) prepared jointly by DOL, the Internal Revenue Service (IRS), and the Pension

Benefit Guaranty Corporation (PBGC) (collectively ''Agencies''). Those proposed form changes and these proposed regulatory amendments primarily implement statutory changes enacted as part of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act). Conforming changes also are being proposed to the requirements for the summary annual report. The proposed regulatory amendments would affect employee pension and welfare benefit plans, plan sponsors, administrators, and service providers to plans subject to annual reporting requirements under ERISA and the Code.

DATES:

Comment due date: Comments are due on or before November 1, 2021.

Proposed applicability dates: If adopted, the proposed regulatory amendments to implement the SECURE Act's amendment of section 103(g) would apply to 2021 plan year reporting. All other proposed regulatory amendments would apply to reporting for plan years beginning on or after January 1, 2022.

ADDRESSES: You may submit written comments, identified by RIN 1210–AB97, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210, Attention: Proposed Revision of Annual Information Return/Reports RIN 1210–AB97.

Instructions: All submissions must include the agency name and Regulatory Identifier Number (RIN) for this rulemaking. The DOL will share any comment submitted in response to this regulatory proposal with the IRS and the PBGC. To avoid unnecessary duplication of effort, the Agencies also will treat public comments submitted in response to this notice of proposed rulemaking as public comments on the Notice of Proposed Forms Revisions to the extent they include information relevant to the proposed regulatory amendments. If you submit comments electronically, do not submit paper copies. Comments will be available to the public, without charge, online at *http://www.regulations.gov* and *http://www.dol.gov/agencies/ebsa* and at the Public Disclosure Room, Employee Benefits Security Administration, Suite N–1513, 200 Constitution Ave. NW, Washington, DC 20210.

Warning: Do not include any personally identifiable or confidential business information that you do not want publicly disclosed. Comments are public records posted on the internet as received and can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: Janet Song or Colleen Brisport Sequeda, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693–8500 (this is not a toll-free number), for questions related to these proposed amendments to the DOL regulations.

Customer service information: Individuals interested in obtaining information from the DOL concerning Title I of ERISA may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the DOL's website (*www.dol.gov/agencies/ebsa*).

SUPPLEMENTARY INFORMATION:

A. Legislative and Regulatory Reporting Framework

Titles I and IV of ERISA and the Internal Revenue Code (Code), generally require pension and other employee benefit plans to file annual returns/reports concerning, among other things, the financial condition and operations of the plan. Filing a Form 5500 Annual Return/Report of Employee Benefit Plan (Form 5500) or, if eligible, a Form 5500–SF Short Form Annual Return/Report of Small Employee Benefit Plan (Form 5500–SF), together with any required schedules and attachments (together ''the Form 5500 Annual Return/Report''),[1] in accordance with their instructions, generally satisfies these annual reporting requirements.

ERISA section 103 broadly sets out annual financial reporting requirements for employee benefit plans under Title I of ERISA. The Form 5500 Annual Return/Report for Title I purposes is promulgated pursuant to DOL regulations under the ERISA provisions authorizing limited exemptions and simplified reporting and disclosure for welfare plans under ERISA section 104(a)(3), simplified annual reports under ERISA section 104(a)(2)(A) for pension plans that cover fewer than 100 participants, and alternative methods of compliance for all pension plans under ERISA section 110. The Form 5500 Annual Return/Report, and related instructions and regulations, are also promulgated under the DOL's general regulatory authority in ERISA sections 109 and 505.

In addition to being an important disclosure document for plan participants and beneficiaries, the Form 5500 Annual Return/Report is a critical enforcement, compliance, and research tool for the DOL, the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC) (together ''Agencies''). The Form 5500 Annual Return/Report is also an important source of information and data for use by other Federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies. In the United States, there are an estimated 2.5 million health plans, an estimated 885,000 other welfare plans, and nearly 772,000 private pension plans. These plans cover roughly 154 million private sector workers, retirees, and dependents, and have estimated assets of $12.2 trillion. The Form 5500 Annual Return/Report serves as the principal source of information and data available to the Agencies concerning the operations, funding, and investments of approximately 843,000 pension and welfare benefit plans that file.[2] Accordingly, the Form 5500 Annual Return/Report is essential to each Agency's enforcement, research, and policy formulation programs, as well for the regulated community, which makes increasing use of the information as more capabilities develop to interact with the data electronically. The data is also an important source of information and data for use by other Federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies. The Form 5500 Annual Return/Report also serves as the primary means for monitoring the operations of plans by participating employers in multiple employer plans and other group arrangements, plan participants and beneficiaries, and by the public.

The forms, schedules, and instructions, also serve to help the DOL carry out its statutory directives under sections 506 and 513 of ERISA. Specifically, section 506(a) of ERISA authorizes the Secretary of Labor to coordinate with other Agencies to avoid unnecessary expense and duplication of functions among Government agencies. The Agencies designed the Form 5500

[1] References to the ''Form 5500 Annual Return/Report'' may include depending on the context, the Form 5500, the Form 5500–SF, and the Form 5500–EZ, Annual Return of One Participant (Owners and Their Spouses) Retirement Plan (Form 5500–EZ). The Form 5500–EZ is a return that is required only to satisfy the Code. Form 5500–EZ filers are not subject to Title I of ERISA.

[2] Estimates are based on 2019 Form 5500 filings. DOL notes that welfare plans with less than 100 participants that are unfunded or insured (do not hold assets in trust) are generally exempt from filing a Form 5500. Therefore, while DOL estimates there are 2.5 million health plans and 885,000 non-health welfare plans, respectively only 69,000 and 91,000 of these plans filed a 2019 Form 5500.

Annual Return/Report so that it could be used simultaneously to satisfy annual return/report requirements to the Agencies, and to help the Agencies more effectively and efficiently (from both the public's and the Agencies' perspectives) provide oversight, assist with compliance, and enforce the provisions of ERISA and the Code. Section 506(b) gives the DOL responsibility for detecting and investigating civil and criminal violations of Title I of ERISA. The Form 5500 Annual Return/Report is one of the important tools the DOL uses to carry out its responsibility to detect and investigate such violations. Section 513(b)(2) of ERISA specifically directs DOL to undertake research studies relating to pension plans, including but not limited to (A) the effects of this subchapter upon the provisions and costs of pension plans, (B) the role of private pensions in meeting the economic security needs of the nation, and (C) the operation of private pension plans including types and levels of benefits, degree of reciprocity or portability, and financial and actuarial characteristics and practices, and methods of encouraging the growth of the private pension system.

Recent legislative and regulatory changes affecting multiple employer pension plans (MEPs) and similar arrangements are spurring the current need to update the Form 5500 Annual Return/Report and related regulations. Specifically, as discussed in more detail in the NPFR, the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act),[3] included various provisions designed to improve the private employer-based retirement system. Among other things, the SECURE Act included changes designed to simplify retirement plan administration for certain eligible defined contribution plans and added provisions to the Code relating to MEPs, including MEPs with pooled plan providers, and adopted provisions under Title I of ERISA that designated these MEPs with pooled plan providers as pooled employer plans.

The NPFR published concurrently in this issue of the **Federal Register** sets forth a discussion of form and instruction changes that relate to these proposed regulations. These proposed revisions to the DOL's reporting regulations are needed for the DOL to implement the forms revisions proposed in the three-agency (DOL, IRS, and PBGC) Notice of Proposed Forms Revisions (NPFR).

B. Discussion of the Proposed Revisions to 29 CFR Part 2520

1. Section 2520.103–1(a)(2)

Section 2520.103–1 generally describes the content of the Form 5500 Annual Return/Report as a limited exemption and alternative method of compliance for ERISA-covered employee benefit plans to satisfy annual reporting requirements under Title I. The proposal adds a reference to ''section 202 of the SECURE Act'' to paragraph (a)(2) of § 2520.103–1 to set forth the authority for prescribing a consolidated report alternative method of compliance for certain groups of defined contribution retirement plans under proposed §§ 2520.103–14 and 2520.104–51, discussed below, relating to defined contribution group (DCG) reporting arrangements.

2. Sections 2520.103–1(b)(1) and 2520.103–1(c)(1)

Paragraphs (b) and (c) of § 2520.103–1 generally describes the contents of the annual report for large plans (generally those with 100 or more participants) and small plans (generally those with fewer than 100 participants). The proposal would amend § 2520.103–1(b)(1) to add a proposed multiple employer plan (MEP) schedule (titled Schedule MEP) to the list of schedules and attachments required to be included with the Form 5500 for large MEPs. A parallel update is being proposed to § 2520.103–1(c)(1) to add the Schedule MEP as a schedule that small MEPs must include with the Form 5500.[4]

2. Section 2520.103–1(c)(2)(ii)

Paragraph (c) of § 2520.103–1 describes the conditions under which an eligible small plan (generally with fewer than 100 participants) may file the Form 5500–SF. The proposal would add § 2520.103–1(c)(2)(ii)(F) to state that MEPs, which include pooled employer plans, as well as MEPs described in the DOL's regulation at § 2510.3–55 (association retirement plans and professional employer organization (PEO) MEPs), are not permitted to use the Form 5500–SF regardless of whether the plan meets the size and other requirements for filing a Form 5500–SF. A similar prohibition applies under the current regulation to MEWA plans required to file the Form M–1 and to multiemployer plans. The proposal would also add a new § 2520.103–1(c)(2)(ii)(G) to provide a similar prohibition on filing the Form 5500–SF for DCG reporting arrangements. As described below in proposed §§ 2510.103–14 and 104–51, DCG reporting arrangements must file the aggregated annual report for participating plans using the Form 5500, including the schedules and attachments that are generally required for large retirement plans and Direct Filing Entities (DFEs) as well as a Schedule DCG (Individual Plan Information) for each plan whose reporting obligation is being satisfied by the DCG filing.

3. Amendments to § 2520.103–10

Section 2520.103–10 identifies financial schedules that are required to be included as part of the Form 5500 Annual Return/Report depending on the characteristics and operations of the plan. The listed schedules include the ''Schedule of Assets Held for Investment'' and ''Schedule of Assets Acquired and Disposed within the Plan Year.'' Paragraph (b) of § 2520.103–10 sets forth the content requirements for these schedules. The NPFR being published concurrently with this NPRM includes proposed additions and clarifications to the content of the ''Schedules of Assets Held for Investment'' and the ''Schedule of Assets Acquired and Disposed within the Plan Year'' that are designed to improve the consistency, transparency, and usability of the information reported regarding plan investments. The proposed changes to the contents and format of the schedule are described in detail in the NPFR and also set forth in the proposed amendment to the regulatory text in paragraph (b)(1)(i) of § 2520.103–10. Currently, filers typically file the schedule as a PDF. Of particular note, the proposal specifies that the schedules would have to be filed electronically through the ERISA Filing Acceptance System II (EFAST2) electronic filing system in a structured format in accordance with the EFAST2 requirements and the Form 5500's instructions.

4. New §§ 2520.103–14, 2520.104–51 and 2520.104a–9—Consolidated Form 5500 as an Alternative Method of Compliance for Plans Participating in a DCG Reporting Arrangement

The proposal would amend the ERISA annual reporting regulations to implement the SECURE Act section 202 directive to the Secretary of Labor to jointly with the Secretary of the Treasury provide for a single, aggregated Form 5500 option that would satisfy the annual reporting obligations for the defined contribution pension plans

[3] The SECURE Act was enacted on December 20, 2019, as Division O of the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94).

[4] *See* NPFR for detailed discussion of the proposed Schedule MEP and Schedule DCG.

participating in the group. Under the proposal, several conditions relating to the DCG reporting arrangement, the participating plans, and the content of the Form 5500 filing would have to be satisfied before the aggregated filing would satisfy the annual reporting requirements of the separate participating plans. The NPFR describes those conditions in detail. The conditions also are set forth in a proposed new 29 CFR 2520.103–14 and 2520.104–51.[5]

With respect to the content requirements for a DCG consolidated Form 5500 filing, proposed paragraph (b) of § 2520.103–14 provides that the consolidated DCG report would be required to include a Form 5500 ''Annual Return/Report of Employee Benefit Plan'' and various statements or schedules based on the characteristics and operations of the participating plans, including Schedule A (Insurance Information), Schedule C (Service Provider Information), Schedule D (DFE/Participating Plan Information), Schedule G (Financial Transaction Schedules), Schedule H (Financial Information), Schedule R (Retirement Plan Information), Schedule DCG (Individual Plan Information),[6] supplemental schedules referred to in 29 CFR 2520.103–10 with information aggregated for all the participating plans, the report and opinion of an independent qualified public accountant (IQPA) for the DCG trust, and an IQPA report and opinion for any individual participating plans with 100 or more participants that would be subject to the audit requirement if filing a separate Form 5500. This would include separate financial statements, if such financial statements are prepared in order for the independent qualified public accountant to form the required opinions on the DCG trust required under the proposal and the individual participating large plans required by section 103(a)(3)(A) of the Act and § 2520.103–2(b)(5).[7]

[5] The proposal is modeled to some extent on the existing annual reporting rules for fully insured welfare benefit plans that participate in a group insurance arrangement (GIA) and for investment entities that file as a Direct Filing Entity. *See* 29 CFR 2520.103–2, 2520.103–12, 2520.104–21, and 2520.104–43.

[6] *See* NPFR for detailed description of the proposed Schedule DCG. A separate Schedule DCG would be required for each individual participating plan. In the case of an existing plan that joins a DCG filing arrangement, the identifying information regarding the plan and employer/plan sponsor that was used in prior filings for the plan must be used to identify the plan and the employer/plan sponsor on the Schedule DCG for the plan.

[7] *See* NPFR for a more detailed discussion of the content requirements for DCG Form 5500.

Proposed paragraph (d) would make clear that the DCG reporting arrangement must comply with the electronic filing requirements that apply to all plan filers and direct filing entities (DFE). *See* § 2520.104a–2 and the instructions for the Form 5500 Annual Return/Report for electronic filing requirements. In addition, the proposed paragraph emphasizes that the common plan administrator of all the participating plans that is filing the consolidated Form 5500 must maintain an original copy, with all required signatures, as part of its records (which also would be treated as records of each of the participating plans).

The proposed new § 2520.104–51 would authorize the DCG consolidated report as an alternative method of compliance under ERISA section 110 for defined contribution pension plans that participate in DCG reporting arrangements. Specifically, filing of a complete and accurate consolidated Form 5500 for the DCG reporting arrangement would relieve the administrator of each individual participating defined contribution pension plan that meets the requirements of paragraph (b) of § 2520.104–51 of the obligation to file an individual annual report under Title I of ERISA. This alternative method of compliance would be available only for a defined contribution pension plan in a plan year in which (i) such plan participates in a DCG reporting arrangement that meets the conditions of paragraph (c) of this proposed § 2520.104–51; and (ii) the DCG reporting arrangement has filed with the Secretary of Labor in accordance with proposed § 2520.104a–9, a complete and accurate consolidated annual report that meets the content requirements under proposed § 2520.103–14. To make clear that the DCG reporting arrangement is a direct filing entity (DFE) that is submitting the aggregated Form 5500 on behalf of the participating plans, proposed § 2520.104–51(b)(2) provides that that the term ''DCG reporting arrangement'' shall be used in place of the term ''plan'' where it appears in §§ 2520.103–3, 2520.103–4, 2520.103–6, 2520.103–8, 2520.103–9, and 2520.103–10 and elsewhere in subparts C and D of 29 CFR part 2520, as applicable.

Proposed § 2520.104–51 would also provide that the reporting relief for individual plans would apply only if all plans participating in the DCG reporting arrangement (i) are individual account plans or defined contribution plans; (ii) have—(A) the same trustee (''common trustee'') and same trust holding the assets of the participating plans (''common trust''); (B) the same one or more named fiduciaries, except the proposal would allow for the employer/plan sponsor to be a named fiduciary of each employer's own plan provided that the other named fiduciaries under the plans are the same and common to all plans (''common named fiduciaries''); (C) a designated administrator that is the same plan administrator for all the participating plans (''common plan administrator''); (D) plan years beginning on the same date (''common plan year''); (iii) provide the same investments or investment options to participants and beneficiaries (''common investments or investment options''); (iv) have the investment assets held in a single trust of the DCG reporting arrangement; (v) not hold any employer securities; (vi) be 100% invested in certain secure, easy to value assets that meet the definition of ''eligible plan assets'' (see the instructions for line 6a of the Form 5500–SF), such as mutual fund shares, investment contracts with insurance companies and banks valued at least annually, publicly traded securities held by a registered broker dealer, cash and cash equivalents, and plan loans to participants; (vii) be audited by an IQPA or be eligible for the waiver of the annual examination and report of an IQPA under 29 CFR 2520.104–46, but not by reason of enhanced bonding; and (viii) may not be a multiemployer plan or a MEP (including association retirement plans, pooled employer plans and professional employer organization plans (PEO plans)).

Proposed § 2520.104–51 would also expressly state that the alternative method of complying with the Title I annual reporting requirements would not relieve the administrator of the individual participating plans from any other requirement of Title I of the Act, including, for example, the provisions that require that plan administrators furnish copies of the summary plan description to participants and beneficiaries (ERISA section 104(b)(1)), furnish certain documents to the Secretary of Labor upon request (ERISA section 104(a)(6)), and furnish a copy of a Summary Annual Report (SAR) to participants and beneficiaries of the plan (ERISA section 104(b)(3)). Proposed § 2520.104–51(c)(2)(iii) provides that all plans participating in a DCG reporting arrangement must have a designated common plan administrator that is the same plan administrator for all the participating plans. The SECURE Act was not explicit on whether this was intended to require the same person to be the plan administrator under ERISA section

3(16)(A) for the purpose of meeting the annual reporting requirements for each participating plan or was intended to require that the same person be the plan administrator of each participating plan for all purposes under ERISA. The proposal requires that the same person sign the DCG filing as the plan administrator for each participating plan. The Department solicits comments on whether the final rule should address whether individual plans participating in a DCG may have a separate statutory administrator responsible for other duties ERISA assigns to the plan administrator (*e.g.,* distribution of summary plan descriptions).

Finally, proposed new § 2520.104a–9 provides that, as would be the case for all of the participating plans in the DCG reporting arrangement if they were filing individually, the aggregated Form 5500 for the DCG is due no later than the end of the 7th month after the end of the common plan year that all the plans must have in order to participate in a DCG reporting arrangement pursuant to the requirement in section 202 of the SECURE Act and the proposed regulation at § 2520.104–51. Because the DCG filing is an alternative to each participating plan filing its own Form 5500, that would mean that each plan would have to submit its own IRS Form 5558 to extend the plan's due date, and, as a consequence, extend the due date for the DCG filing. A plan that did not submit a timely Form 5558 and that participated in a DCG filing that was submitted after the 7th month normal due date would be treated as having filed late. Public comments are specifically solicited on how the filing extension process should be structured for DCGs, including whether DCG reporting arrangements should be able to file a single Form 5558 to obtain an extension for filing the DCG consolidated report on behalf of the participating plans as an alternative to having each individual plan file a Form 5558 for there to be an extension for the reporting group as a whole.[8]

As noted above, section 110 of ERISA permits the DOL to prescribe for pension plans alternative methods of complying with any of the reporting and disclosure requirements if the Secretary finds that: (1) The use of the alternative method is consistent with the purposes of ERISA and it provides adequate disclosure to plan participants and beneficiaries, and adequate reporting to the Secretary; (2) application of the statutory reporting and disclosure requirements would increase costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan; and (3) the application of the statutory reporting and disclosure requirements would be adverse to the interests of plan participants in the aggregate. The DOL believes that the proposal on DCG reporting arrangements meets those conditions, especially given the statutory direction in the SECURE Act to create such a reporting option, but also specifically solicits comments on the required findings under section 110.

As also discussed in the NPFR, the DOL expects that cost savings for plans relying on a DCG filing compared to plans filing separately will generally require the DCG to collectively exceed an aggregate participant count of 100 participants. In other words, the DOL does not expect a DCG filing to provide meaningful cost savings for plans compared to filing their own annual report in the case of DCG arrangements with an aggregate participant count of under 100 participants. Rather, we expect in such cases that the individual plans would likely qualify for filing the Form 5500–SF and that they will likely find it more cost effective to file their own separate Form 5500–SF. Accordingly, this proposal does not include an option under which such a ''small'' DCG could file as a small plan. Nonetheless, the DOL solicits comments regarding the merit of those expectations and assumption and whether the rules should provide a simplified reporting option for ''small'' DCG reporting arrangements.

5. Section 2520.104b–10

Section 2520.104b–10 sets forth the requirements for the Summary Annual Report (SAR) appendix and prescribes formats for such reports. The DOL proposes updating this section to reflect the new filing option for DCG reporting arrangements and the addition of the new Schedule MEP and Schedule DCG to the 5500 Annual Report/Return. The proposal includes adding to the existing model language in the DOL's regulation new text that plans would use to provide a brief description of the plan based on the plan characteristic codes listed for the plan on the Form 5500, including whether it is a defined contribution or defined benefit plan, and whether the plan is a pooled employer plan, another type of multiple employer plan, a single employer plan, or a plan participating in a DCG reporting arrangement, respectively. The proposed new regulatory language also includes text for plans to use that states a copy of the Schedule DCG and the Schedule MEP are available on request, as applicable. For plans participating in a DCG reporting arrangement, the new language advises that a statement of the aggregate assets and liabilities of all the plans in the DCG reporting arrangement and accompanying notes, a statement of aggregate income and expenses of the DCG reporting arrangement and accompanying notes, and a copy of the audit report filed for the trust of the DCG reporting arrangement are available on request. Finally, the new SAR language would state that a copy of the Form 5500 annual report filed for the plan or DCG is available online from EBSA via a DOL website at *www.efast.dol.gov.*

C. Applicability Dates

If adopted, the proposed amendments to implement the SECURE Act's amendment of section 103(g) would apply to reporting for plan years beginning on or after January 1, 2021. The other proposed rules, including those under section 202 of the SECURE Act and structuring the schedules of assets held for investment, generally would apply to reporting for plan years beginning on or after January 1, 2022. The NPFR published concurrently in this issue of the **Federal Register** sets forth a comprehensive discussion of form and instruction changes that relate to these proposed regulations.

D. Regulatory Impact Analysis

The following is a discussion of the DOL's examination of the effects of this rule as required by Executive Order 12866,[9] Executive Order 13563,[10] the Paperwork Reduction Act of 1995,[11] the Regulatory Flexibility Act,[12] section 202 of the Unfunded Mandates Reform Act of 1995,[13] Executive Order 13132,[14] and the Congressional Review Act.[15]

1.1. Executive Orders

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the

[8] Under the somewhat similar consolidated reporting provisions applicable to GIAs, the GIA is permitted to use the IRS Form 5558 to apply for an extension of time the GIA consolidated report on behalf of the plans participating in the GIA.

[9] Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

[10] Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 18, 2011).

[11] 44 U.S.C. 3506(c)(2)(A) (1995).

[12] 5 U.S.C. 601 *et seq.* (1980).

[13] 2 U.S.C. 1501 *et seq.* (1995).

[14] Federalism, 64 FR 153 (Aug. 4, 1999).

[15] 5 U.S.C. 804(2) (1996).

importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Under Executive Order 12866, ''significant'' regulatory actions are subject to review by the Office of Management and Budget (OMB).[16] Section 3(f) of the Executive order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

A full regulatory impact analysis must be prepared for major rules with economically significant effects (for example, $100 million or more in any 1 year), and the Office of Management and Budget (OMB) reviews ''significant'' regulatory actions. It has been determined that this rule is not economically significant within the meaning of section 3(f)(1) of the Executive order. Pursuant to the terms of the Executive order, OMB has determined, however, that this action is ''significant'' within the meaning of section 3(f)(4) of the Executive order. Therefore, the DOL has provided an assessment of the potential costs, benefits, and transfers associated with this proposed rule. In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by OMB. Pursuant to the Congressional Review Act, OMB has designated this proposed rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

1.2. Introduction and Need for Regulation

The Form 5500 Annual Return/Report is the principal source of information and data available to the Agencies concerning the operations, funding, and investments of pension and welfare benefit plans covered by ERISA and the Code. Accordingly, the Form 5500 Annual Return/Report is essential to each Agency's enforcement, research, and policy formulation programs and is a source of information and data for use by other Federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies. The Form 5500 Annual Return/Report also serves as the primary means by which the operations of plans can be monitored by plan participants and beneficiaries and the general public.

As discussed earlier in this document and the related NPFR publishing concurrently with this proposal, the SECURE Act included various provisions designed to improve the private employer-based retirement system by seeking to make it easier for businesses to offer retirement plans, and for individuals to save for retirement, through the creation of new plan structure and reporting options. These new structures will require new annual reporting, which has resulted in the need to update the Form 5500 Annual Return/Report and related regulations.

Pooled Employer Plans and Other MEPs: The SECURE Act amended ERISA and the Code to address certain MEPs administered by pooled plan providers. Under section 3(43) of ERISA such plans are called pooled employer plans. The proposed regulation would add a new Schedule MEP to the Form 5500 annual report to collect information on employers participating in MEPs and to gather compliance information on pooled employer plans. Some of the information on the proposed Schedule MEP is currently reported on the Form 5500 Annual Return/Report by MEPs, but it is reported on a nonstandard attachment. Only an image or picture of the attachment is available through the EFAST2 public disclosure function. Making the information data-capturable by including it on the proposed Schedule MEP would improve the uniformity and accuracy of the data and increase its usability.

''*Defined Contribution Group (DCG) Reporting Arrangement*'*':* Section 202 of the SECURE Act directs the Secretary of the Treasury and the Secretary of Labor (together ''Secretaries'') to modify the returns required under section 6058 of the Code and the reports required by section 104 of the ERISA, respectively, so that all members of a group of defined contribution individual account plans that meet certain conditions may file a single aggregated annual return/report satisfying the requirements of both such sections. The SECURE Act provides that to constitute an eligible group of plans, all of the plans in the group must be either individual account plans or defined contribution plans, must have the same trustee, the same named fiduciaries, the same administrator, plans years beginning on the same date, and must provide the same investments or investment options to participants and beneficiaries. The proposed rule would establish the conditions, including the SECURE Act conditions, under which filing a single, aggregated Form 5500 Annual Return/Report by a ''defined contribution group (DCG) reporting arrangement'' would satisfy the individual, annual reporting obligations for each of the plans participating in the group. As discussed in more detail in the NPFR, the proposed rule also includes adding a new Schedule DCG (Individual Plan Information) to provide individual plan-level information for plans covered by a DCG consolidated Form 5500 filing.

In addition, although not directly implementing SECURE Act changes, some of the changes being proposed in this document are intended to ensure that annual reporting by pooled employer plans, other MEPs, and DCGs provides appropriate financial and operational transparency and accountability. Certain proposed changes would benefit workers in plans other than pooled employer plans and DCGs would apply more broadly, *e.g.,* improving the quality of financial reporting. Other changes being proposed relate to efforts to improve compliance and oversight with respect to the Code issues and defined benefit plans subject to the PBGC insurance program under Title IV of ERISA.

Schedule H, Schedule of Assets Held for Investment, and Schedule of Assets Acquired and Disposed of Within the Year: As discussed in the NPFR, the Agencies are proposing structural, data element, and instruction changes to the current Schedule H, Line 4i Schedules of Assets. Current Line 4i would be broken into two items to identify the existing schedules separately: Line 4i(1) would identify the Schedule of Assets Held for Investment at End of Year, and Line 4i(2) would identify the Schedule of Assets Acquired and Disposed of Within Year (together ''Schedules of Assets''). The current regulations and instructions require most large plans and DFEs to attach the Schedules of Assets to the Form 5500, Schedule H.[17]

[16] Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

[17] In 2019, the plans required to file the Form 5500 included any benefit plan or a welfare benefit plan that covered 100 or more participants as of the beginning of the plan year and a Form 5500 filed for a master trust investment account (MTIA), common/collective trust (CCT), pooled separate account (PSA), 103–12 investment entity (103–12 IE), or GIA. However, fully insured, unfunded, or a combination of unfunded/insured welfare plans and fully insured pension plans that meet the

Continued

They are the only place on the Form 5500 Annual Return/Report where plans are required to list individual plan investments identified by major characteristics, such as issue, maturity date, interest rate, cost and current value. As such, they are the only part of the Form 5500 Annual Return/Report useful to evaluate the year-to-year performance, liquidity, and risk characteristics of a plan's individual investments.

The current reported information suffers from several shortcomings. First, filers currently submit this information as non-standard attachments to filers' electronic Form 5500 Annual Return/Report filings, so only an image or picture of the attachments is available through the EFAST2 public disclosure function. A survey panel of plan sponsors, service providers, representatives of plan participants, and researchers was conducted in 2014 as part of a Government Accountability Office (GAO) report; 11 of 31 respondents indicated that having no standard reporting format was a very or extremely significant challenge. GAO reported that attachments to the form may be as long as 400 pages, making it particularly difficult for users to find information.[18] Second, filers do not always provide the Line 4i Schedules of Assets in the same place in each annual return/report. For example, the Line 4i Schedules of Assets are often incorporated in the larger audit report of the plan's IQPA that itself is filed as a nonstandard attachment to the Form 5500 Annual Return/Report. Third, the schedules do not require a standardized method for identifying and describing assets on the Line 4i Schedules. Different filings may identify the same stock or mutual fund with various different names or abbreviations. In the aforementioned GAO survey, most researchers indicated that a lack of a standard reporting format or unique identifier for plan assets was a major challenge, while representatives of plan sponsors and service providers did not.[19]

Data capturability of the Line 4i Schedules of Assets would make it much easier and more efficient to monitor plan holdings as computer programs can read and analyze the data much more efficiently. Currently, entities expend considerable resources collecting the data and presenting it in a usable format, to which they then sell access. Making the information data capturable at the submission stage of the process would be more cost effective as it removes the need for a second entity to gather the information, and allow more entities access to the data at a lower overall cost. The DOL's Office of Inspector General (''DOL–OIG'') and the GAO have both recommended that EBSA implement changes to create more detailed and structured Schedules of Assets.[20] It would also allow the Agencies and the interested public, including the participants and beneficiaries in impacted plans, to better monitor a larger number of pension plans and their asset allocations. A number of private entities have been using the information reported on Line 4i Schedule of Assets Held for Investment in larger pension plan Form 5500 Annual Return/Report filings into data-capturable information and have been using it to compare plan investment menus and investment allocations. The DOL believes this development is evidence that plans sponsors and their service providers are interested in having access to these data. For example, one company that uses the Schedules of Assets data sent a letter to DOL stating that they believe that the information on the Form 5500 Annual Return/Report is very useful in ''helping the agency understand the performance and design of retirement plans in the market place'' and that the data availability fosters ''third party data collection and evaluation efforts that in turn help protect retirement plan participants.'' [21] Plan sponsors can use this information to see better how their investment menus compare to similarly situated plans and service providers use this information to identify plans with underperforming investments in order to attract new business. This can lead to more competition and improved plan performance, which would ultimately benefit plan participants and beneficiaries.

Defined Benefit Pension Plan/ERISA Title IV Additions: The Form 5500 collects information from defined benefit pension plans in Schedules MB, SB, and R. The PBGC has determined that it needs more detail in these schedules accurately to project defined benefit pension plan and PBGC insurance program liabilities. The PBGC's proposed changes to the information required to be reported by PBGC-insured defined benefit plans would remedy the deficiencies of the current Form 5500 filings and better protect participants. There are 23,371 single employer defined benefit plans and 1,373 multiemployer defined benefit plans that are covered by the PBGC and would be impacted by these changes.[22]

Internal Revenue Code Compliance Additions: Prior to 2009, Schedule E, ESOP Annual Information, Schedule P, Annual Return of Fiduciary of Employee Benefit Trust, and Schedule T, Qualified Pension Plan Coverage Information, were required as part of the annual return under section 6058(a) of the Code and associated regulations, but they were not information collections of the DOL or the PBGC. Beginning in 2009, DOL mandated electronic filing of Form 5500, Annual Return/Report of Employee Benefit Plan, and Form 5500–SF, Short Form Annual Return/Report of Small Employee Benefit Plan. At that time limitations on the IRS' authority to require electronic filing of annual returns resulted in the removal of the ''IRS-only'' schedules from the Form 5500 filing requirements. The lack of information from these schedules has negatively impacted the IRS's ability to focus effectively on specific factors of noncompliance when selecting retirement plans for examination. Rather than reinstating the Schedules E, P, and T, the IRS is proposing to add new questions to the 2022 Form 5500 designed to assist the IRS in identifying plans that are non-compliant relating to Code section 410(b) coverage, Code section 401(a)(4) non-discrimination, and Code section 401(k) non-discrimination testing. Additionally, IRS is proposing to add a question that would help it identify whether adopters of pre-approved plans have been updated timely for changes in the law.

Affected Entities

Major portions of this proposal relate to SECURE Act statutory changes that

requirements of 29 CFR 2520.104–44 are exempt. If a Schedule I was filed for the plan for the 2018 plan year or a Form 5500–SF and the plan covered fewer than 121 participants as of the beginning of the 2019 plan year, the Schedule I may be completed instead of a Schedule H. Plans that file a Form 5500–SF for the 2019 plan year are not required to file a Schedule H for that year.

[18] Private Pensions: Targeted Revisions Could Improve Usefulness of Form 5500 Information, at 17.

[19] *Id.*

[20] *See* EBSA Needs to Provide Additional Guidance and Oversight to ERISA Plans Holding Hard-to-Value Alternative Investments at 17, September 30, 2013. *https://www.oig.dol.gov/public/reports/oa/2013/09-13-001-12-121.pdf;* Private Pensions: Targeted Revisions Could Improve Usefulness of Form 5500 Information, at 37. June 5, 2014. *https://www.gao.gov/products/gao-14-441.*

[21] *See* August 23, 2010 Comment Letter from Ryan Alfred, President, BrightScope, Inc. Re: Proposed Extension of Information Collection, Form 5500 *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201009-1210-002*).

[22] PGBC 2018 Pension Insurance Data Tables. *https://www.pbgc.gov/sites/default/files/2018_pension_data_tables.pdf.*

(1) recognized a new type of multiple employer plan under Title I of ERISA called pooled employer plans; and (2) called for the Secretaries to establish a new consolidated annual report for certain groups of defined contribution pension plans (herein called DCG reporting arrangements). The SECURE Act amendments first authorized pooled employer plans to begin operating beginning on January 1, 2021; even early adopted pooled employer plans generally will not file a Form 5500 before July 2022. Similarly, DCG reporting arrangements are a new filing option starting with the 2022 plan year; such consolidated filings will not begin until July 2023. Thus, there is no historical Form 5500 information that the DOL can use reliably to evaluate the number of affected entities. As a result, there is significant uncertainty regarding the DOL's ability to measure costs and benefits that may result from this proposal. The DOL nonetheless is presenting below an overview of potentially affected entities and an approach to evaluating the possible impacts of this proposal. In evaluating costs and benefits, the DOL took account of the fact that various types of plans could be affected by more than one proposed revision. DOL is also soliciting data relevant to an evaluation of costs and benefits and comments on alternative methodologies and assumptions for evaluating the costs and benefits.

Defined Contribution Pension Plans: In 2018, there were 675,007 defined contribution plans with 105.8 million total participants and 83.4 million active participants. Plans with fewer than 100 total participants (small plans) account for 87.4 percent of plans.[23]

Defined Contribution Group (DCG) Reporting Arrangement: As this is a new type of annual reporting method, the DOL does not have data on how many DCGs would be created nor the number of plans that would choose to satisfy their individual filing obligations by meeting the requirements for being part of a DCG, including the filing of a consolidated Form 5500 Annual Return/Report by the common plan administrator. We note that in 2018 there were 499,234 small defined contribution plans that reported the plan characteristic code 3D in their Form 5500–SF to indicate that they are intended to operate as pre-approved plans under sections 401, 403(a), and 4975(e)(7) of the Code. The DOL assumes that a DCG reporting option may suit their existing plan and business models and that, therefore, some fraction of these plans may find it advantageous to join a DCG for filing purposes.

Defined Benefit Pension Plans: In 2018, there were 46,869 defined benefit plans with 34.0 million total participants and 13.1 million active participants. There were 45,275 single-employer defined benefit plans and 1,388 multiemployer defined benefit plans.[24]

Multiple Employer Pension Plans: A MEP, for Form 5500 reporting purposes, generally is a retirement plan maintained by two or more employers that are not members of the same controlled group or affiliated service group under Code section 414(b), (c), or (m), and which is not a multiemployer plan.[25] In 2018, there were 4,730 MEPs filing a Form 5500, of which 207 were defined benefit pension plans and 4,523 were defined contribution pension plans. There were 6.9 million participants reported as covered by these plans.[26] The proposal, if finalized, would establish a new Schedule MEP to report information specific to pension MEPs. While the new Schedule MEP would retain ERISA section 103(g) participating employer information that MEPs must currently file as a non-standardized attachment, it also would add the SECURE Act requirement for pension MEPS to report aggregate account balances information for each participating employer in the MEP. Schedule MEP would also include questions intended to focus on SECURE Act issues and compliance for pooled employer plans.

Association Retirement Plan. An association retirement plan is a defined contribution MEP, sponsored by a bona fide group or association of employers that meets the conditions under 29 CFR 2510.3–55(b). The DOL does not have information on how many reporting MEPs are association retirement plans or otherwise to estimate the number of association retirement plans (a sub-class of MEPs) that currently exist.

Professional Employer Organizations (PEOs) Plan: A PEO MEP is a defined contribution pension plan sponsored by a bona fide PEO that meets the conditions under 29 CFR 2510.3–55(c). According to the National Association of Professional Employer Organizations, there are 487 PEOs in the United States.[27] The DOL does not have information on how many PEOs currently meet the conditions under 29 CFR 2510.3–55(c) to sponsor defined contribution MEPs for their clients, but assumes a substantial percentage of PEOs do sponsor MEPs, including defined contribution MEPs.

Pooled Employer Plans. The SECURE Act amended section 3(2) of ERISA and added section 3(43) to ERISA to authorize a new type of ERISA covered defined contribution MEP referred to as a ''pooled employer plan'' to be operated by a ''pooled plan provider.'' In its 2020 final rule on Registration Requirements for Pooled Plan Providers, the DOL noted the uncertainty surrounding the number of pooled employer plans that could be created based on the final rule, the number of employers that would participate in such plans, and the number of participants and beneficiaries that would be covered by them.[28] Approximately 50 pooled plan providers have filed an initial Form PR Pooled Plan Provider Registration (Form PR) and registered with the DOL.[29]

The DOL does not have comprehensive data on how many employers are participating in pooled employer plans or the number of participants covered by the plans until the pooled employer plans file their first Forms 5500 in 2022 for their 2021 reporting year. The DOL attempted to review available public information on pooled employer plans by looking at information included in the filed Forms PR, and by examining news articles and statements on the pooled plan provider's websites. That review indicated that that there are a variety of approaches in how pooled employer plans are offered, and a variation in the

[23] Employee Benefits Security Administration. ''Private Pension Plan Bulletin, Abstract of 2018 Form 5500 Annual Report.'' (2020). The 2018 Form 5500 data set is the most recent available because Form 5500 filings for the 2018 reporting year generally are not required to be filed for calendar year plans until July through October of 2019, and the deadline for fiscal year plans may extend well into 2020. The User Guide for the 2018 Form 5500 Private Pension Plan Research File includes a discussion of the creation of the annual data set and timing of data extraction. *See www.dol.gov/sites/dolgov/files/EBSA/researchers/data/retirement/pension-user-guide-2018.pdf* (Accessed July 21, 2021).

[24] *Id.*

[25] *See, e.g.,* 2020 Form 5500 instructions at 14.

[26] Employee Benefits Security Administration. ''Private Pension Plan Bulletin, Abstract of 2018 Form 5500 Annual Reports.'' (June 2020).

[27] National Association of Professional Employee Organizations, *Industry Statistics* (Accessed 6/28/2021), *https://www.napeo.org/what-is-a-peo/about-the-peo-industry/industry-statistics.* NAPEO had previously reported 904 PEOs but revised its methodology. An explanation of the revision is included on the NAPEO website. *See* The PEO Industry Footprint 2021, Laurie Bassi and Dan McMurrer, McBassi & Company at page 4 (May 2021) (available at *www.napeo.org/docs/default-source/white-papers/2021-white-paper-final.pdf?sfvrsn=6dde35d4_2.*

[28] 85 FR 72934, 72949 (Nov. 16, 2016).

[29] Department of Labor. Form PR. *https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-pr.*

number of employers that have joined a pooled employer plan. While pooled plan providers are required to update the Form PR to advise the DOL and the IRS about the establishment and offering of new pooled employer plans, the Form PR does not collect information on the number of employers participating in their pooled employer plans or the number of employees covered by each plan. One pooled plan provider was reported in another source as having 2,000 employers joined their pooled employer plan, whereas other providers reported five to 10 employers had joined their pooled employer plans. As part of the request for comments, the DOL is seeking information on the number of employers that have already joined a pooled employer plan and the number of employees covered by the plan in total and broken down by employer.

Pre-approved Pension Plans: These are plans that reported plan characteristics code 3D when filing the Form 5500 Annual Return/Report. The code 3D indicates ''A pre-approved plan under sections 401, 403(a), and 4975(e)(7) of the Code that is subject to a favorable opinion letter from the IRS.'' A pre-approved retirement plan is a plan offered to employers by financial institutions and others that are authorized to sponsor pre-approved plans. The pre-approved plan provider then makes the IRS-approved plan available to adopting employers. Providers must make reasonable and diligent efforts to ensure that adopting employers of the plan have actually received and are aware of all plan amendments and that such employers complete and sign new plans when necessary.[30] Of the 611,568 defined contribution pension plans that reported code 3D, 544,090 are reported as small plans, as they report having fewer than 100 participants each. Of these small defined contribution plans, 499,234 file the Form 5500–SF, cover approximately 10.0 million participants, and hold approximately $0.6 trillion in assets. The DOL expects that Form 5500–SF small pension plan filers are the most likely candidates to join a DCG or a pooled employer plan. The DOL lacks information on the number of plans, whether or not currently Form 5500–SF eligible filers, that would join a DCG or a pooled employer plan. The DOL is seeking comment on this issue.

Multiple Employer Welfare Arrangement (MEWA): A MEWA is defined in ERISA section 3(40)(B) generally as an employee welfare benefit plan or any other arrangement, which is established or maintained for the purpose of offering or providing welfare benefits to the employees of two or more employers, or to their beneficiaries. For purposes of this definition, two or more trades or businesses, whether or not incorporated, are deemed a single employer if such trades or businesses are under common control. Section 3(40) excludes from the definition of the term MEWA any plan or arrangement established or maintained under or pursuant to a collective bargaining agreement, or by a rural electric cooperative or rural telephone cooperative association. MEWAs that offer or provide coverage for medical benefits are generally required to file the Form M–1. In the 2018 calendar year, there were 640 total plan MEWAs that filed a Form M–1 with 2.0 million total participants. There were 47 non-plan MEWAs based on Form M–1 filings.[31]

Plans affected by change in participant-count methodology for determining large plan versus small plan status and related filing requirements. As discussed in the NPFR, the Agencies are proposing a change in the methodology for defined contribution pension plans to determine whether the plan is a ''large plan'' (generally covers 100 or more participants) for purposes of Form 5500 annual reporting requirements, including the requirement to include an IQPA report and other schedules generally applicable to large pension plans. The plan size measure for this annual reporting distinction is based on the total number of participants at the beginning of the plan year and expressly includes employees eligible to participate in a Code section 401(k) plan (''401(k) plan'') even if the employees has not elected to participate and does not have an account balance. The proposed change would use a participant count based on the number of participants at the beginning of the year with an account balance. Current Form 5500 filings collect the number of participants at the end of the year with a balance, and does not currently collect such a figure for the beginning of the plan year. Accordingly, we used the end of year number of participants with a balance to estimate the number of plans impacted by this change. The actual number of plans effected could be higher or lower, depending on a plan's dynamics, but for plans that are growing, using the end of year number as a proxy for the beginning of year number could lead to an overestimate of the number of affected plans. Using the current definitions of large and small plans, there are 84,754 large defined contribution plans and 590,254 small defined contribution plans. Using the number of participants at the end of the year with an account balance as a proxy for the new proposed methodology, there are 65,312 large defined contribution plans and 609,695 small defined contribution plans. This would result in an estimated 19,442 defined contribution plans that, if the regulations are finalized as proposed, would be able to file as small plans instead of large ones and would experience cost savings, including due to being able to satisfy the conditions for being exempt from the IQPA report and from including the Schedules of Assets as part of their annual report.

Benefits

Benefits of Changes for Pooled Employer Plans. The SECURE Act established a new type of ERISA-covered defined contribution pension plan, the pooled employer plan, that is established and maintained by a pooled plan provider that meets the conditions of the statute. By creating the pooled employer plan structure, the SECURE Act permitted multiple unrelated employers to participate without the need for any common interest among the employers (other than having adopted the plan). As discussed above, pooled employer plans need to provide ERISA section 103(g) participating employer information, as well as certain basic information regarding the pooled plan provider. Potentially increased reporting costs for those employers choosing to offer retirement benefits to their employees through participating in a pooled employer plan would be offset by other cost reductions or business benefits relative to not having administer an individual plan as further discussed below.

By participating in a pooled employer plan, employers could minimize their fiduciary responsibilities for ongoing administration and operation of the plan. Employers could benefit from reduced risk and liability because the pooled plan provider would bear most of the administrative and fiduciary responsibility for operating the pooled employer plan, including hiring and monitoring the 3(38) investment manager. Similarly, because the pooled plan provider handles the administrative tasks such as participant communications, plan recordkeeping, submitting the Form 5500 and complying with plan audits, this could increase the operating efficiency for participating employers. Also, as they

[30] IRS website at *https://www.irs.gov/retirement-plans/pre-approved-retirement-plans* (last updated Apr 2, 2021).

[31] These figures are based on calculations from 2018 Form M–1 filing data.

are expected to be professional plan providers, it is anticipated that a pooled plan provider, relative to a small employer, would ensure that more accurate and complete data is reported to the DOL on the Form 5500. Further, as discussed in the regulatory impact analysis to the regulation establishing the Form PR, pooled employer plans generally would benefit from scale advantages, including the ability to obtain lower fees for investment options.[32] The marginal costs for pooled employer plans would diminish and pooled plan providers would spread fixed costs over a larger pool of member employers and employee participants, creating direct economic efficiencies. Szapiro's research finds that the per-employer cost of a large MEP can be lower than the cost of a small single employer plan.[33] Specifically, the study finds that a MEP with $125 million and 80 participating companies cost 78 basis points, whereas a single-employer plan with $1.5 million cost 111 basis points. Thus, compared to single-employer plans, MEPS can be a more cost-efficient option for small employers. The increased economic efficiency may result in small businesses being able to compete more easily with larger companies in recruiting and retaining workers due to a competitive employee benefit package. Finally, pooled employer plans may enable participants to achieve better retirement outcomes. VanDerhei's research finds that the adoption of a MEP in which the members do not need to share a common interest, other than participating in the same plan, with a 25 percent opt-out rate among employees, results in an overall 1.4 percent reduction in the retirement savings deficit, compared to when a MEP is not adopted.[34] The study also finds a 3.1 percent reduction in the retirement savings deficit for individuals working for employers with fewer than 100 employees and 3.3 percent reduction in the retirement savings deficit for individuals working for employers with 100 to 500 employees.

Benefits of Establishing the Proposed Schedule MEP. A benefit of the proposed Schedule MEP would provide a unified vehicle to report information related to new SECURE Act provisions, including information unique to MEPs. The participating employer information collected pursuant to section 103(g) of ERISA would also be data capturable and available at publicly viewable website containing images of the Form 5500 and related data sets. That public data would help protect plan participants and beneficiaries by allowing for improved analysis for oversight and research purposes by the government, the regulated community, and other interested stakeholders.

Benefits of DCGs. The proposal would update Form 5500 annual reporting requirements to establish requirements pursuant to section 202 of the SECURE Act for a consolidated return/report to provide eligible individual account plans with an alternative method of compliance with annual reporting requirements that would otherwise mandate a separate annual report for each plan. The consolidated reporting option for defined contribution pension plans also allows for more choice and flexibility in the reporting of information to the government. Eligible plans can choose, based on benefits and preferences, if they want to continue with the plan filing as individual plan or as part of a DCG. Plans whose individual reporting obligations would be satisfied by a DCG annual return/report filing may see a reduction in reporting costs depending on their circumstances.

The proposal includes the proposed Schedule DCG to provide individual plan-level information for those defined contribution pension plans whose annual reporting requirement would be satisfied by a DCG's consolidated filing. The uniformity of the DCG arrangement structure and the benefits of consolidated reporting may reduce the complexity and administrative burden of plans. Also, by having a common plan administrator who is expected to be a professional service provider filing on behalf of a group, it may increase the likelihood that more accurate and complete data is reported to the DOL. As a result, there may be an increase in annual reporting compliance and compliance with applicable ERISA requirements in general. Additionally, the Schedule DCG would help the Agency compare individual plan participation and aggregate asset and liability information from year-to-year. The Schedule DCG would include many of the questions that are currently required on the Form 5500–SF, and for large plans, the Schedule H questions regarding the report of an IQPA, as well as an IQPA report. While this requirement reduces the cost saving of filing as a DCG, the DOL and the IRS (collectively ''Departments'') believe the information requested is consistent with the SECURE Act provision permitting the Departments to collect whatever plan level information is needed to perform adequate oversight and vital to provide to participants, beneficiaries, and the Departments information needed to adequately monitor the plans and keep track of their assets from year to year.

In light of changes in the financial environment and increasing concern about investments in hard-to-value assets and alternative investments, the proposed requirement that plans participating in DCGs must have investments that meet the currently applicable ''eligible plan investment'' criteria for filing a Form 5500 is important for regulatory, enforcement, and disclosure purposes. The proposal would also add trust questions to the Form 5500, the Form 5500–SF, and, the IRS Form 5500–EZ, regarding the name of the plan's trust, the trust's employer identification number (EIN), the name of the trustee or custodian, and the trustee's or custodian's telephone number. This information will enable the Agencies to focus more efficiently on compliance concerns for retirement plan trusts, including those for pooled employer plans and DCG reporting arrangements.

Changes to Method of Determining Small Plan Status for Certain Filing Exemptions and Requirements: As described in the NPFR, the proposal would change the current method of counting covered participants for purposes of determining when a defined contribution plan may file as a small plan and whether the plan may be exempt from the IQPA audit requirements generally applicable to large defined contribution pension plans. Under the proposal, defined contribution pension plans, including 401(k) plans and 403(b) plans, would determine whether they have to file as a large plan and whether they have to attach an IQPA report based on the number of participants with account balances as of the beginning of the plan year. Currently, the IQPA requirement includes the total number of eligible participants at the beginning of the plan year, even if the participant is not making contributions, receiving employer contributions, or maintaining an account in the plan. Further, some stakeholders have suggested that section 112 of the SECURE Act could make it even more likely that a plan with a small number of active participants

[32] 85 FR at 72949–72950.

[33] Szapiro, Aron, ''Pooled Employer Plans: Paperwork or Panacea.'' Accessible at *https://www.morningstar.com/lp/paperwork_or_panacea.*

[34] VanDerhei, Jack. ''How Much More Secure Does the SECURE Act Make American Workers: Evidence from EBRI's Retirement Security Projection Mode.'' *EBRI Issue Brief.* No 501 (2020). VanDerhei refers to MEPs in which the members do not need to share a common interest as ''Open MEPs.'' (Available at *https://www.ebri.org/docs/default-source/ebri-issue-brief/ebri_ib_501_secure-20feb20.pdf?sfvrsn=db6f3d2f_4* (Accessed July 21, 2021.)).

might be required to bear the cost of an audit based on eligible, but not participating employees being counted toward the audit threshold. Specifically, because section 112 provides that, beginning January 1, 2024, long-term, part time workers that have reached the plan's minimum age requirement and have worked at least 500 hours in each of three consecutive 12-months period must be permitted to make elective contributions to a section 401(k) qualified cash or deferred arrangement, there could be more employees eligible to participate that would elect not to do so. This change in counting methodology would result in not counting, for this annual reporting purpose, those long-term, part time workers who are eligible to make elective contributions to a 401(k) plan, but have not in fact elected to participate in the plan. The DOL expects that excluding from the participant count participants who are eligible to participate but do not have an account balance at any time during the plan year will reduce expenses of establishing and maintaining a retirement plan, and as a consequence, encourage more employers to offer workplace-based retirement savings plans to their employees.

Improving Consistency and Enhancing Usability of Data Filed on the Schedules of Assets. The financial information reported on the Form 5500 Annual Return/Report, particularly the asset/liability statement, contained in the current Schedule H (Large Plan Financial Information), Schedule I (Small Plan Financial Information), as well as the more recently established Form 5500–SF, is based on data elements that have remained largely unchanged since the Form 5500 Annual Return/Report was established in 1975. Many investments in alternative and hard-to-value assets and held in collective investment funds do not fit squarely into any of the existing reporting categories on data captured financial schedules filed with the Form 5500 (Schedule H for large plans and Schedule I for small plans). The GAO has expressed concerns that many investments with widely varying risk, return, and disclosure considerations are often reported in the catchall ''other plan asset'' category.[35] GAO also noted that the plan asset categories on the Schedule H are not representative of current plan investments, and provide little insight into the investments themselves, the level of associated risk, or structures of the investments.[36] The DOL–OIG have also recommended that the Agencies revise the Form 5500 Annual Return/Report to improve reporting of hard-to-value assets and alternative investments.[37] As part of their overall evaluation of how best to structure financial reporting for pooled employer plans, MEPs, and DCG reporting arrangements to maximize usable data while limiting burden increases, the Agencies decided, as discussed in detail earlier in this document and the Notice of Proposed Forms Revisions published simultaneously, to propose format, data element and instruction changes to the Schedule H, Line 4i Schedule of Assets Held for Investment and the Schedule of Assets Acquired and Disposed of Within the Plan Year. Although driven by an interest in ensuring transparency and financial accountability for pooled employer plans, MEPs, and DCG reporting arrangements, the rationales for the changes applied more generally to large pension and retirement savings plans. These changes apply to large plans required to file the Schedules of Assets and would not increase the annual reporting burden for small plans. The proposed changes to the Schedule H Line 4i Schedules of Assets, in addition to better meeting the needs of the Agencies, other government users, and other end users of the data, should serve to address the shortcomings identified in these reports. The basic objective of general financial reporting is to provide information about the reporting entity for the Agencies' enforcement, research, and policy formulation programs, for other Federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies; and for plan participants and beneficiaries and the general public in monitoring employee benefit plans. Making consistent the financial reporting instruments would bring greater transparency to plan transactions, which would enhance the efficiency of the Agencies' enforcement efforts. Specifically, the Agencies would be better able to focus their enforcement efforts, which will reduce the number of investigations involving plans that are not engaging in problematic activities. Additionally, ERISA Section 513(a) authorizes and directs the Secretary of Labor and EBSA to conduct a research program on employee benefits. The Form 5500 Annual Return/Report is one of the leading sources of data used in this research program. Making uniform and receiving in a data searchable way the financial information reported on the Form 5500 Annual Return/Report would improve the quality of the research conducted by internal and external researchers. This improved research, in turn, would improve the quality of policy decisions made by DOL and other governmental policymakers that rely on the Form 5500 Annual Return/Report data.

Benefits of Maintaining Participating Employer Information for MEWAs and Expanding It to Non-Plan MEWAs that Provide Medical Benefits. The proposal, as described in the NPFR, would add new questions to the Form M–1 and instructions to require MEWAs (plan and non-plan) that offer or provide coverage for medical benefits to provide multiple employer participating employer information on the Form M–1 and not as an attachment to the Form 5500 Annual Return/Report. Plan MEWAs that provide other benefits and thus are not required to file a Form M–1 (*i.e.,* life and disability benefits) would continue to report the participating employer information as an attachment to the Form 5500 Annual Return/Report.

The proposal would also change which MEWAs are required to report the participating employer information. The current Form 5500 requirement for MEPs to report participating employer information applies to plan MEWAs only. Non-plan MEWAs providing health benefits would now have to provide the information. Based on 2018 Form M–1 filings, there were 640 plan MEWAs and 47 were non-plan MEWAs.[38] The proposal, by transferring the participating employer information from the Form 5500 Annual Return/Report to the Form M–1 for MEWAs that offer or provide coverage for medical benefits and continuing to require reporting of participating employer information on the Form 5500 Annual Return/Report for plan MEWAs that provide other benefits, would enable the Agencies to receive participating employer information from both plan and non-plan MEWAs, regardless of how they are funded or structured. This would help the Agencies better monitor activities of MEWAs and protect plan beneficiaries.

[35] GAO Targeted Revisions Could Improve Usefulness of Form 5500 Information, at 12.

[36] *Id.*

[37] EBSA Needs to Provide Additional Guidance and Oversight to ERISA Plans Holding Hard-To-Value Alternative Investments, Department of Labor Office of Inspector General Report Number: 09–13–001–12–121 at 4, 18, and 19.

[38] These calculations are based on internal Department calculations based on 2018 Form M–1 filings. See the affected entities section for more information.

Internal Revenue Code-Based Questions for the 2022 Form 5500s. In the NPFR, several questions are being proposed to be added to the 2022 Form 5500s to help identify plans that are more likely to experience compliance issues, and help the IRS more effectively conduct investigations. Section III.F of the preamble to the NPFR provides a description of these proposed Code-based questions. The proposal, as set forth in the NPFR, would add a nondiscrimination and coverage test question to Form 5500 and Form 5500–SF that was on the Schedule T before it was eliminated. The question asks if the employer aggregated plans in testing whether the plan satisfied the nondiscrimination and coverage tests of Code sections 401(a)(4) and 410(b). Adding this question will allow EP to identify these plans for examination. This question is also helpful when performing pre-audit analysis and allows the IRS to narrow any inquiries for information that is requested from the plan sponsor. The restoration of this question also reflects the elimination of optional coverage and nondiscrimination demonstrations in the IRS determination letter process. *See* Rev. Proc. 2012–6, 2012–1 I.R.B. 235 and Announcement 2011–82, 2011–52 I.R.B. 1052.

The proposal, as described in the NPFR, would add a question to Form 5500 and Form 5500–SF, for 401(k) plans asking whether the plan sponsor used the design-based safe harbor rules or the ''prior year'' ADP, or ''current year'' ADP test, or if it is not applicable. A plan that performs ''prior year'' or ''current year'' ADP testing is more likely to have compliance issues than a plan with a ''designed-based safe harbor.'' Adding this question, would allow EP to identify 401(k) plans that use ADP testing for examination over plans that have designed-based safe harbors. This question would also help the IRS perform pre-audit analysis and for design-based safe harbor plans allow us to verify whether allocations of required safe harbor contributions comply with the terms of the plan; and whether proper notice requirement is satisfied on an annual basis.

Finally, the proposal, as indicated in the NPFR, would add a question to Form 5500 and the Form 5500–SF asking whether the employer is an adopter of a pre-approved plan that received a favorable IRS Opinion Letter, the date of the favorable Opinion Letter, and the Opinion Letter serial number.[39] This question would help the IRS identify whether a plan sponsor has adopted a pre-approved plan and to determine whether the plan was adopted timely in accordance with the Code section 401(b) remedial amendment period. This question would also assist IRS in determining whether to select a plan for examination as a late amender for changes in the law.

Defined Benefit Plan/Title IV Questions for the 2022 Form 5500s: The proposed changes to the Form 5500 Schedules MB, SB, and R would help remedy data and information inadequacies, increasing plans' transparency, enable Agencies to project more precisely defined benefit pension plans' and insurance programs' liabilities, and help the PBGC more effectively conduct investigations and better protect plan participants and beneficiaries.

Schedule MB collects actuarial information on multiemployer defined benefit plans and certain money purchase plans. By revising line 6 and clarifying the expense load percentage calculation, the Agencies would be able to easily identify the expense load and more accurately project plan liabilities to model the impact of additional employers withdrawing from the plan in the future. The proposed changes to the schedule would provide greater transparency in the actuarial status and the actuarial assumptions of the plans. Based on reviewing previously filed Schedules MB responses to line 4f, it appears to the Agencies that there is some confusion as to how to fill out line 4f of Schedule MB correctly, as some of the responses do not make sense. Clarification of the instructions and line language is intended to remove potential confusion and provide more consistent and correct responses.

Schedule SB collects actuarial information on single-employer defined benefit plans. The proposed changes would better align filing requirements for single-employer defined benefit plans with the more detailed requirements for PBGC-insured multiemployer plans. As with the proposed changes to the Schedule MB, these proposed changes would allow for greater transparency in the actuarial status and the actuarial assumptions of the plans.

Schedule R collects information on retirement plans. Previously, multiemployer defined-benefit pension plans were required to report identifying information about any employer whose contributions to the plan exceeded five percent of total annual contribution. The regulation proposes, instead, to require plans to report identifying information on any employer who (1) contributed more than five percent of the plan's total contributions or (2) was one of the top ten highest contributors. This would provide greater transparency on contributors and ensure that reported data represents a reasonable sampling of contributors.

The proposed regulation also proposes changes in format for certain attachments. EFAST2 filers currently file some Form 5500 attachments as PDF and plain text files. Due to the nature of the attachments, they often include many numbers that are difficult to extract from these file types. There is consideration being given to steps that could be taken to allow more integration of common tabular formats (spreadsheet) such as Comma Separate Value(s) (CSV). As this is not being considered as a requirement at this point, plans would not incur an additional cost if such functionality were made available. Rather, the Agencies expect this option may simplify the process for preparing and filing attachments.

1.3. Cost Estimates and Savings

The DOL anticipates that the costs for plans to satisfy their annual reporting obligations would on average decrease under these proposed regulations relative to the current regime.[40] As shown in Table 1 below, the aggregate annual cost of such reporting under the current regulations and forms is estimated to be $514.8 million annually, shared across the 822,100 filers subject to the filing requirement.

The DOL estimates that the regulations and forms revisions in this proposed rule would impose an annual burden of $514.1 million on 804,100 filers, for a total decrease of $64.6 million annually, $63.9 million annually in audit cost savings and $0.7 million annually in other reporting costs. This proposal makes important changes to the requirements currently in effect while also allowing for the number of small plans and large plans to change for annual reporting purposes. The DOL estimates that a total of 17,601 small plans and 563 large plans would opt to join either a DCG or a pooled employer plan, and therefore have their filing requirement fulfilled by these

[39] IRS is proposing to make a parallel update to the Form 5500–EZ, which is solely in the jurisdiction of the IRS.

[40] The DOL believes that the annual cost burden on filers would be higher still in the absence of the regulations enabling use of the Form 5500 Annual Return/Report in lieu of the statutory requirements. Without the Form 5500 Annual Return/Report, filers would not have the benefits of any regulatory exceptions, simplified reporting, or alternative methods of compliance, and standardized and electronic filing methods.

entities. The DOL also estimates that 19,442 large plans would be re-defined and file as small plans as a result of the change in the current threshold for determining when a defined contribution plan may file as a small plan.

TABLE 1—ESTIMATED BURDEN CHANGE BY TYPE OF FILER
ALL PROPOSED CHANGES

Type of plan	Number of filers under current (thousands)	Number of filers under proposed (thousands)	Aggregate cost under current (millions)	Aggregate cost under proposed (millions)	Aggregate cost change (millions)
Large Plans	146.8	126.9	$268.8	$260.3	−$8.4
Small Plans	666.1	667.9	234.7	235.2	0.5
DFEs	9.3	9.4	11.4	18.6	7.2
All Plans	822.1	804.1	514.8	514.1	−0.7
Audit Cost					−63.9
Overall Total					−64.6

Note: Some displayed numbers do not sum up to the totals due to rounding.
Large plans—100 participants or more.
Small plans—generally fewer than 100 participants.

To estimate the net change in cost burden, as a result of the interaction of the proposed changes, the DOL has also analyzed the cost impact of the individual revisions on classes of filers. In doing so, the DOL took account of the fact that various types of plans would be affected by more than one revision and that the sequence of multiple revisions would create an interaction in the cumulative burden on those plans. The total changes in Table 1 show the accumulated changes. The other tables below show only the impact of a single change at a time from the status quo; therefore, the tables cannot be added to arrive at the estimates in Table 1.

Schedule MEP and Pooled Employer Plans. The proposed new Schedule MEP would be filed by all MEPs, including pooled employer plans, and includes participating employer information already filed as an attachment, as well as limited specific reporting requirements for pooled employer plans. The information on participating employers would then be data-readable, whereas currently it is only included as a nonstandard attachment. As discussed in the affected entities section, estimates are available for MEPs that have filed a Form 5500 previously, but not for the newly created pooled employer plans that have yet to file a Form 5500. The impacts of the DOL recent rulemaking on association retirement plans and PEO MEPs also carries some uncertainty regarding the number of MEPs that may be affected. Approximately 50 entities have filed the Form PR to register as pooled plan providers. Therefore, for purposes of this analysis, the DOL assumes there would be a total of 75 pooled employer plans. As it is the case with MEPs, joining a pooled employer plan translates into less plan maintenance expenditures given that MEPs can take advantage of economies of scale. Additionally, in the DOL's view, the information requested on the Schedule MEP should already be available to plans, so the burden is primarily entering the information onto the form. The burden to file the Schedule MEP is estimated to average 10 minutes for MEPs and 14 minutes for pooled employer plans, with variation depending on the number of participating employers.

Although the DOL does not know for certain how many plans would decide to offer benefits through a pooled employer plan, it is assumed that the current average number of participating employers in a MEP is indicative of the average number of employers that would eventually be in any particular pooled employer plan that may be established in the future. The DOL estimates that MEPs, on average, have nine employers participating in a MEP with fewer than 100 participants and two employers with 100 or more participants. The DOL uses these measures as estimates for most of the upcoming pooled employer plans, therefore assuming that, for most pooled employer plans, on average there would be nine small participating plans and two large participating plans per pooled employer plan. Combined with one pooled plan provider registrant that has already listed 2000 participating employers, it is estimated that a total of 2,251 small participating plans and 563 large participating plans would provide benefits through pooled employer plans.[41] The DOL assumes this would result in a direct decrease of 2,251 defined contribution Form 5500–SF filers and a decrease of 563 Form defined contribution 5500 filers. As Table 2 shows this would result in a reporting cost reduction of $1.5 million (not including the audit cost reduction in Table 1) and a total reduction of filers from 822,100 to 819,400 filers. Such a reduction in filers would be partially offset by an increase in pooled employer plan filings. We are not, however, able to explicitly measure the net impact on filings because of the uncertainty

[41] For the calculation of the total number of participating employers in pooled employer plans, it is first assumed that 80 percent of all the employers who would participate in a pooled employer plan are currently providing benefits through small plans, and that the remaining 20 percent through large plans. This distribution would apply to the registrant that has already exceptionally listed 2000 employers (which would then be divided in 1600 small participating plans and 400 large participating plans) and to the other 74 pooled plan providers assumed to be created. It is also assumed that each one of these other 74 pooled plan providers would be servicing in total 11 employers. Therefore, the total number of small participating plans in a pooled employer plan is calculated as: 1,600 + (74 * 11 * 0.8) = 2,251 (rounded). Similarly, the total number of large participating plans is calculated as 400 + (74 * 11 * 0.2) = 563 (rounded).

regarding the number of pooled employer plans and the resulting increase in pooled employer plan filings. The DOL requests comments on these estimates.

TABLE 2—ESTIMATED BURDEN CHANGE BY TYPE OF FILER
INTRODUCTION OF POOLED EMPLOYER PLANS AND SCHEDULE MEP FILING

Type of plan	Number of filers under current rules (thousands)	Number of filers under proposed rules (thousands)	Aggregate reporting cost under current rules (millions)	Aggregate reporting cost under proposed rules (millions)	Aggregate cost change (millions)
Large Plans	146.8	146.3	$268.8	$267.9	−$0.9
Small Plans	666.1	663.8	234.7	234.0	−0.7
DFEs	9.3	9.3	11.4	11.4	0.0
Overall Total	822.1	819.4	514.8	513.3	−1.5

Note: Some displayed numbers do not sum up to the totals due to rounding.
Large plans—100 participants or more.
Small plans—generally fewer than 100 participants.

DCG filings. As discussed above, a DCG filing for a group of plans has the potential to reduce reporting burden as only one Form 5500 is filed and signed by a common plan administrator so signatures from separate administrators of the participating plans are not needed. Offsetting these cost savings would be the burden from the consolidated Form 5500 filed by the DCG, including the Schedule DCG to report individual plan information for each participating plans. There are 499,234 small defined contribution plans that file the Form 5500–SF and report the plan characteristic code 3D; the DOL assumes this type of plan may find it advantageous to adopt this new structure of providing benefits and therefore a fraction of them will join a DCG. The DOL seeks comments on these assumptions.[42]

The change in burden from allowing a DCG to file on behalf of plans is estimated in the following manner. Apart from the 499,234 small defined contribution mentioned above, there are 1,813 pre-approved plans.[43] While the DOL does not know if all 1,813 pre-approved plans actually would file on behalf of these 499,234 plans, if they did there would be an average of 275 plans per pre-approved filer. These pre-approved filers are the likeliest entities to file as a DCG. Although DOL lacks sufficient information to confidently estimate how many DCGs will form, the 50 entities that have filed the Form PR to register as a pooled plan provider, so far, may be suggestive of the number of entities currently seeking to take advantage of new structures to reduce plan administrative costs. Potential DCGs may be better positioned than pooled plan providers to commence operations as they already have client plans that could benefit from the savings and do not have to switch plans. Therefore, the DOL assumes that twice the number of DCGs (100) would form in the first year as the number of pooled plan providers (50). With the availability of DCGs as an option, some service providers may discontinue their provision of individual Form 5500 filing services, and only offer to file as DCGs. Some plans that contract with such service providers may choose to be moved into DCG filings, while others may seek out new service providers because they don't wish to comply with the additional filing obligations placed on DCG filers. For purposes of this analysis, we assume that approximately half of the plans currently associated with a pre-approved plan provider would be offered the opportunity and would agree to comply with the DCG requirements to stay with the same provider. The DOL then uses these results to assume 100 DCGs with a total of 15,350 small plans whose annual return/report filing obligation would be satisfied by the filing of a DCG Form 5500.

As described above, the consolidated return/report that would need to be filed by the DCG to satisfy the annual reporting requirements of participating plans would have to include a Schedule DCG for each participating plan. The cost calculation must therefore take into account cost of this schedule per plan participating in a DCG. The DOL believes that once individual plans join a DCG, the average cost of filing a Schedule DCG, which would be done for each one of the estimated 15,350 participating plans, would be lower than the cost of filing a Form 5500–SF separately, which cost was incurred by a small plan before joining a DCG. Although the DOL does not know how much lower this new cost would be, it estimates that completing a schedule DCG as part of the DCG's Form 5500 annual return/report would take about 40 percent less time than completing a Form 5500–SF for each individual plan.

As Table 3 shows, assuming the number of DCGs and plans per DCG as described above, along with the estimated cost of filing schedule DCG, the DOL expects an overall cost reduction of $1.6 million. This cost reduction assumes, as baseline, the current definition of large and small plans, and would be the result of a decrease in the number of Form 5500–SF filers, from 666,100 to 650,700. Such a reduction in filers would be partially offset by an increase in DFE filings, which reflects the introduction of DCGs as filing entities.

[42] The DOL acknowledges that there could be other employers whose plans are outside the category of small defined contribution type, which currently file the Form 5500–SF and report plan characteristic 3D, that might also find an advantage in joining a DCG and therefore start providing benefits this way.

[43] *https://www.irs.gov/retirement-plans/pre-approved-retirement-plans.*

TABLE 3—ESTIMATED BURDEN CHANGE BY TYPE OF FILER
INTRODUCTION OF DCGS AND SCHEDULE DCG FILING

Type of plan	Number of filers under current rules (thousands)	Number of filers under proposed rules (thousands)	Aggregate reporting cost under current rules (millions)	Aggregate reporting cost under proposed rules (millions)	Aggregate cost change (millions)
Large Plans	146.8	146.8	$268.8	$268.8	$0.0
Small Plans	666.1	650.7	234.7	230.1	−4.6
DFEs	9.3	9.4	11.4	14.3	2.9
Overall Total	822.1	806.9	514.8	513.1	−1.6

Note: Some displayed numbers do not sum up to the totals due to rounding.
Large plans—100 participants or more.
▪ Small plans—generally fewer than 100 participants.

As noted above, there is substantial uncertainty regarding these estimates. The DOL specifically seeks comments on estimates of the number of DCGs, the number of plans joining those DCGs, and the cost of filing a schedule DCG compared to filing a Form 5500–SF, and the overall cost burden savings due to plans joining a DCG.

Revised financial reporting on the Schedule H: Revising the Schedule H Line 4i Schedules of Assets to make it data-capturable to increase the accessibility to this information, including information regarding hard-to-value assets, would increase costs. Without altering the current definition of large and small plans, the DOL estimates that the effect of this change would be to increase the total burden by 370,253 hours, which reflects the increase in burden that large plans and DFEs, both as typical filers of Schedule H, would face. As Table 4 shows, in total this change would translate into an increase of filing costs of $41 million (which represents an estimated cost of approximately $260 per large plan/DFE potentially required to file the Schedules of Assets). The Department seeks comments on the increase in burden for entities filing the Schedule H, and if that burden will decrease over time.

TABLE 4—ESTIMATED BURDEN CHANGE BY TYPE OF FILER
REVISED FINANCIAL REPORTING ON THE SCHEDULE H

Type of plan	Number of filers under current rules (thousands)	Number of filers under proposed rules (thousands)	Aggregate reporting cost under current rules (millions)	Aggregate reporting cost under proposed rules (millions)	Aggregate cost change (millions)
Large Plans	146.8	146.8	$268.8	$305.4	$36.7
Small Plans	666.1	666.1	234.7	234.7	0.0
DFEs	9.3	9.3	11.4	15.6	4.3
Overall Total	822.1	822.1	514.8	555.7	41.0

Note: Some displayed numbers do not sum up to the totals due to rounding.
Large plans—100 participants or more.
Small plans—generally fewer than 100 participants.

Changes to Methodology for Determining Small Plan Status for Purposes of Annual Report Filing Requirements: The proposal would adopt the change described in the NPFR to the current method of counting participants for purposes of determining when a defined contribution plan may file as a small plan and whether the plan may be exempt from the IQPA audit requirement. Specifically, the proposal would allow plans to count just the number of participants/beneficiaries with account balances as of the beginning of the plan year, as compared to the current rule that counts all the employees eligible to participant in the plan by adding to the Form 5500 and Form 5500–SF a new question, for defined contribution pension plans only, asking for the number of participants with account balances at the beginning of the plan year.

This change would reduce costs for plans. The additional question imposes little burden as the end-of year number is already tracked and reported, but to plans who now qualify as small instead of large, savings could be significant. EBSA estimates that the typical reporting burden of all required schedules for a small pension plan is $348. In contrast, the typical reporting burden of all required schedules for a large pension plan is currently estimated by EBSA to be $1,903. While there would be a cost reduction, these plans and their participants would no longer have the protections provided by the audit, which could result in an increased risk of errors and fraud, but there are conditions for small plans to be eligible for the audit waiver that are designed to address those potential risks. In the case of small pension plans, to be eligible for the audit waiver small pension plans must meet conditions related to investment assets, financial institutions holding plan assets, disclosures to participants and beneficiaries, and enhanced fidelity bonding for persons who handle certain assets. In the case of welfare plans, both large and small plans, the plan must be fully insured or unfunded to be eligible for the audit waiver. Consistent with the Department's goal of encouraging pension plan establishment and maintenance, particularly in the small business community, the Department

concluded that engaging an accountant should not be the only means by which the security of small plan assets can be adequately protected. Rather, in developing the proposed regulation, consistent with the existing regulatory conditions for the small plan audit waiver, the Department attempted to balance the interest in providing secure retirement savings for participants and beneficiaries with the interest in minimizing costs and burdens on small pension plans and the sponsors of those plans.

The DOL estimates that there could be a reduction of 20,005 large plans filing under the proposed regulations, 19,442 defined contribution plans due to the changing definition of who can file as a small plan, and 563 large participating plans that could provide benefits through pooled employer plans. An estimated 11,362 of these plans currently provide the IQPA report and audited financial statements and would therefore save in audit costs.[44] The Department estimates that there could be an audit cost reduction of $7,500 for each one of these 11,362 plans. Plans may still conduct an audit, even if there is no requirement. It is estimated that 25 percent of plans could still conduct an audit.[45] Data on the cost of an audit for these plans is not known and will vary based on plan size and complexity. An estimate of $7,500 is used to estimate the cost savings.[46] The Department seeks comment on the size of the costs savings. Cost savings of $63.91 million annually is estimated for the 8,522 plans (11,362 * 0.75) that will no longer be required to conduct an audit. These cost-savings are reported in Table 1 above.

As discussed above there are an estimated 19,442 defined contribution plans that would now be able to file as a small plan. Other reporting cost savings for these plans are based on their filing the Form 5500–SF instead of the Form 5500 and the correspondent schedules. As shown in Table 5, the DOL estimates that this redefinition of small and large alone would translate into a decrease of filing costs of $29.4 million, with a reduction from 146,800 to 127,400 in large plan filers. The DOL requests comments on this estimate.

TABLE —ESTIMATED BURDEN CHANGE BY TYPE OF FILER
CHANGES TO FILING EXEMPTIONS AND REQUIREMENTS FOR SMALL PLANS

Type of plan	Number of filers under current rules (thousands)	Number of filers under proposed rules (thousands)	Aggregate reporting cost under current rules (millions)	Aggregate reporting cost under proposed rules (millions)	Aggregate cost change (millions)
Large Plans	146.8	127.4	$268.8	$233.6	−$35.2
Small Plans	666.1	685.5	234.7	240.4	5.8
DFEs	9.3	9.3	11.4	11.4	0.0
Overall Total	822.1	822.1	514.8	485.4	−29.4

Note: Some displayed numbers do not sum up to the totals due to rounding.
Large plans—100 participants or more.
Small plans—generally fewer than 100 participants.

Changes for MEWAs that file the Form M–1. As set forth in the NPFR, the proposal would update the Form M–1, transferring the multiple employer participating employer information questions from the Form 5500 to the Form M–1 for MEWAs (plan and non-plan) that offer or provide coverage for medical benefits and continued reporting of participating employer information on the Form 5500 Annual as an attachment for plan MEWAs that provide other benefits. The current Form 5500 requirement for MEPs to report participating employer information applies to plan MEWAs offering all types of benefits—not just those that provide group health plans. The DOL estimates that the change in burden would be *de minimis* for these plans.

However, non-plan MEWAs providing health benefits would now have the added burden of providing the participating employer information. The DOL assumes that non-plan MEWAs already have access to this information, and reporting it would not add a substantive burden to these entities' reporting costs.

Internal Revenue Code and ERISA Title IV Proposed Changes. As described the NPFR, the proposal includes changes related to Internal Revenue Code requirements and reporting requirements for defined benefit pensions subject to filing Schedules MB, SB, and R. The Agencies' believe the additional questions reflect information plans should know and expect that reporting this information would result in a de minimis marginal burden.

Assumptions, Methodology, and Uncertainty: The cost and burden associated with the annual reporting requirement for any given plan depend upon the specific information that must be provided, given the plan's characteristics, practices, operations, and other factors. For example, a small, single-employer defined contribution pension plan eligible to file the Form 5500–SF should incur far lower costs than a large, multiemployer defined benefit pension plan that holds multiple insurance contracts, engages in reportable transactions, and has many service providers that each received over $5,000 in compensation. The DOL separately considered the cost to different types of plans in arriving at its aggregate cost estimates. The DOL's basis for these estimates follows.

[44] To estimate the number of large plans currently providing the IQPA report and audited financial statements the DOL identified those large plans that would be most likely to be re-defined as small plans and to have filed the Schedule H in 2018, as estimated on the 2018 Form 5500 Pension Research Files. Note that the 80 to 120 participant transition provision at 29 CFR 2520.103–1(d) allows a plan that covers fewer than 100 participants to continue taking advantage of the simplified option or exemption, as applicable, until they reach 121 participants, therefore not all plans with 100 or more participants will file a plan in a given year.

[45] *See http://Mathematica.org/publications/estimates-of-the-burden-for-filing-form-5500-the-change-in-burden-from-the-1997-to-the-1999-forms.*

[46] A report by Mathematica suggests audit costs of between $3,000 and $30,000. Adjusted for inflation this would be about $5,000 to $50,000 in 2021 dollars. *https://mathematica.org/publications/estimates-of-the-burden-for-filing-form-5500-the-change-in-burden-from-the-1997-to-the-1999-forms. See also www.paychex.com/retirement-services/pooled-employer-plans* (accessed July 21, 2021) which suggest $10,000 to $20,000. Additionally conversations with stake holders suggest a range similar to the $10,000 to $20,000. As the affected plans are expected to be small, the low estimates are averaged ($5,000 and $10,000) to arrive at $7,500.

Assumptions Underlying this Analysis: The DOL's analysis assumes that all benefits and costs would be realized in the first year of the reporting cycle to which the changes apply and within each year thereafter. This assumption is premised on the requirement that each plan will be required to file the Form 5500 Annual Return/Report. The DOL has used a ''status quo'' baseline for this analysis, assuming that the world in the future, absent the proposed regulations, will resemble the present. The DOL does not anticipate that there will be material one-time transition cost for learning or updating systems during the first year in which the reporting changes apply. The proposal would largely apply requirements currently in effect for large MEPs to pooled employer plans and DCGs. The financial services providers and recordkeepers that be sponsoring such plans and DCGs generally are already providing Form 5500 filings services for the employee benefit plans they service so we do not anticipate material start-up costs for them to file Form 5500s on behalf of pooled employer plans or DCGs. We also do not anticipate that individual plans that participate in a DCG reporting arrangement would expend more time to supply information to DCG reporting arrangements during the first year than what they currently incur to supply annual reporting data to service provides that prepare their annual reports (and may in fact incur less time even during the first year). Similarly, the creation of the Schedule MEP mostly reorganizes the way annual reporting data is provided by affected plans, rather than adding significant additional information collection. Similarly, the changes to the content of the Schedules of Assets are calling for reporting of a very limited number of data elements that plans should already have as part of the ordinary business records. The DOL also expects that the formatting changes being proposed to make the Schedules of Assets more usable will match formatting that filers already use to file various other schedules, and, accordingly, they would not involve material costs for learning or system adjustments. Moreover, the DOL is proposing to permit (but not require) certain attachments to Schedule MB and SB to be provided in a tabular format (spreadsheet) rather than PDF or TXT formats. The DOL solicits comments on whether filers would want a similar option for the Schedules of Assets and whether they believe such an option would reduce reporting burdens, including any potential transition cost. Further, with respect to the limited number of additional questions for defined benefit pension plans and Code-related questions for pension plans relate to existing compliance obligations, those questions should not entail material start-up or learning costs. We also do not anticipate material transition costs related to the proposed changes related to reporting participating employer information which largely apply existing requirements in the context of a new schedule for some filers and as an attachment to current filings for others. Nonetheless, the DOL specifically solicits comments on whether plans or groups of plans anticipate a material increase in such transition costs during the first year.

Methodology: Mathematica Policy Research, Inc. (MPR) developed the underlying cost data, which has been used by the Agencies in estimating burden related to the Form 5500 Annual Return/Report since 1999. *See* 65 FR 21068, 21077–78 (Apr. 19, 2000); Borden, William S., *Estimates of the Burden for Filing Form 5500: The Change in Burden from the 1997 to the 1999 Forms,* Mathematica Policy Research, submitted to DOL May 25, 1999.[47] The cost information was derived from surveys of filers and their service providers, as modified due to comments, which were used to measure the unit cost burden of providing various types of information. The DOL has adjusted these unit costs since 1999 to account for changes to the forms and schedules and increases in the cost of labor and service providers since MPR developed the initial data.

For this forms revision, the DOL used the adjusted MPR unit cost data for pension and non-health welfare plans. The DOL developed the unit cost data for group health plans using the best available data. To develop unit costs for DFEs, the DOL created weighted averages of the unit costs for plans.

To obtain filer counts for pension plans, welfare plans, and DFEs, the DOL used historical counts of Form 5500 Annual Return/Report filers tabulated by type and reported characteristics.

The DOL modeled its approach to calculating burden on the approach used during the 2009 forms revision and the 2016 modernization proposal.[48] Aggregate burden estimates were produced in both revisions by multiplying the unit cost measures by the filer count estimates. The methodology is described in broad terms below.

To estimate aggregate burdens, types of plans with similar reporting requirements were grouped together in various groups and subgroups. Calculations of aggregate cost were prepared for each of the various subgroups both under requirements in effect prior to this action and under the forms as revised. The universe of filers was divided into four basic types: Defined benefit pension plans, defined contribution pension plans, welfare plans, and DFEs. For the plans, each of these major plan types was further subdivided into multiemployer and single-employer plans.[49] Since the filing requirements differ substantially for small and large plans, the plan types were also divided by plan size. For large plans (100 or more participants), the defined benefit plans were further divided between very large (1,000 or more participants) and other large plans (at least 100 participants, but fewer than 1,000 participants). Small plans (less than 100 participants) were divided similarly, except that they were divided into Form 5500–SF eligible and Form 5500–SF ineligible plans, as applicable. Welfare plans were divided into group health plans and plans that do not provide any group health benefits, while plans that provide group health benefits and have fewer than 100 participants were divided into fully insured group health plans and unfunded, combination unfunded/fully insured plans, or funded with a trust group health plans. DFEs were divided into Master Trusts/MTIAs, CCTs, PSAs, 103–12 IEs, GIAs, and DCGs. For each of these sets of respondents, burden hours per respondent were estimated for the Form 5500 Annual Return/Report itself and up to seven schedules or the Form 5500–SF (and the Schedule SB, for Form 5500–SF eligible defined benefit pension plans).

We also separately estimated the costs for each of the forms and schedules that are part of the Form 5500 Annual Return/Report. When items on a schedule are required by more than one Agency, the estimated burden associated with that schedule is allocated among the Agencies. This allocation is based on how many items are required by each agency. The burden associated with reading the instructions

[47] The MPR report can be accessed at *https://mathematica.org/publications/estimates-of-the-burden-for-filing-form-5500-the-change-in-burden-from-the-1997-to-the-1999-forms.* See also Technical Appendix: Documentation of Form 5500 Revision Burden Model at *www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/technical-appendices.*

[48] *See* 72 FR 64731 (Nov. 16, 2007) and 81 FR 47496 (July 16, 2016).

[49] For purposes of this analysis, multiple employer plans were treated as single employer plans.

for each item also is tallied and allocated accordingly.

The reporting burden for each type of plan is estimated in light of the circumstances that are known to apply or that are generally expected to apply to such plans, including plan size, funding method, usual investment structures, and the specific items and schedules such plans ordinarily complete. For example, a large single-employer defined benefit pension plan that is intended to be tax-qualified that has insurance products among its investments and whose service providers received compensation above the Schedule C reporting thresholds would be required to submit an annual report completing almost all the line items of the Form 5500, plus Schedule A (Insurance Information), Schedule SB (Single Employer Defined Benefit Plan Actuarial Information), Schedule C (Service Provider Information), possibly the Schedule G (Financial Transaction Schedules), Schedule H (Financial Information), and Schedule R (Retirement Plan Information), and would be required to submit an IQPA report. In this way, the Agencies intend meaningfully to estimate the relative burdens placed on different categories of filers.

Burden estimates were adjusted for the proposed revisions to each schedule, including items added or deleted in each schedule and items moved from one schedule to another.

The DOL has not attributed a recordkeeping burden to the 5500 Forms in this analysis or in the Paperwork Reduction Act analysis because it believes that plan administrators' practice of keeping financial records necessary to complete the 5500 Forms arises from usual and customary management practices that would be used by any financial entity and does not result from ERISA or Code annual reporting and filing requirements.

The aggregate baseline burden is the sum of the burden per form and schedule as filed prior to this action multiplied by the estimated aggregate number of forms and schedules filed.[50] The DOL estimated the burden impact of changes in the numbers of filings and of changes made to the form and the various schedules. The burden estimates use data from the Form 5500 Annual Return/Report for plan year 2018, which is the most recent year for which complete data is available.

1.4. Uncertainty

The SECURE Act created pooled employer plans and directed the Departments to make available consolidated reporting for defined contribution pension plans that meet certain requirements. Due to these proposed rules designed to implement the SECURE Act, as well as the DOL's final rules with respect to association retirement plans and PEO-sponsored plans, the DOL assumes that these types of entities will file a Form 5500 and report the number of participating employers, numbers of covered participants, and amount of assets in the future. However, until they file, the Departments face significant uncertainty about the number of each type of entity and whether they are merely providing coverage in a different manner than was already provided by employers to their employees through single employer plans or already existing MEPs (including association retirement plans and PEOs) or whether with the availability of additional commercial arrangements and plans, more employers will establish plans for their employees.

While pooled plan providers have filed a Form PR and list plans they are forming, they do not report the number of participating employers. The DOL has identified 611,568 defined contribution plans that reported code 3D, of which 499,234 are considered small defined contribution plans filing the Form 5500–SF as possible plans that could join a DCG or a pooled employer plan. However, the decision depends not only on cost savings, and administrative ease, but also on employers' preferences and perceptions about the advantages and disadvantages of joining either group or neither.

The Departments request information that will help improve its current estimates of the numbers of affected entities, employers and the burdens they will experience due to these proposed rules.

1.5. Alternatives

As described above, the DOL proposed changes to Title I annual reporting requirements primarily are designed to implement statutory changes enacted as part of the SECURE Act. The DOL considered several alternative approaches to address these statutory changes, including:

- Not requiring an audit for large plans that are part of a DCG reporting arrangement, and instead requiring just an audit of the DCG's trust. Including more or fewer questions on the Schedule DCG and the Schedule MEP.
- Including more or fewer questions for defined benefit plans on issues under Title IV of ERISA or questions for retirement plans on Internal Revenue Code compliance issues.
- Not adding new content elements to the Schedules of Assets and not requiring the Schedules of Assets to be filed in a data-capturable format.
- Not changing the methodology for participant count for determining whether a defined contribution retirement plan is subject to the annual reporting requirements applicable to large plans versus small plans.
- Allowing a DCG with under 100 total participants to file as a small plan rather than requiring all DCGs to generally follow the annual reporting requirements applicable to large plans—*i.e.,* Form 5500, Schedule A (if applicable), Schedule I, Schedule R (if applicable)—no IQPA audit, and no detailed supplemental schedules.
- Not requiring non-plan MEWAs and/or non-group health MEWA plans report the participating plan information on the Form M–1 and Form 5500, respectively.

While slightly less burdensome than the proposed rule's requirements, requiring fewer data elements or less transparent and usable data filing requirements would provide substantially less information to the DOL, which would impede its ability to fulfill its critical oversight role of protecting participants and plan assets. Employers in DCGs and MEPs also would receive less information to survey the market when choosing a DCG or pooled plan provider or deciding whether to continue to rely on an existing provider. Less information and less usable data filing requirements would also not have as effectively served the interests of other users of Form 5500 data, including the IRS, PBGC, other Federal agencies, Congress, and the private sector who use the Form 5500 filings as an important source of information and data in assessing employee benefit, tax, and economic trends and policies.[51]

2. Paperwork Reduction Act Statement

As part of its continuing effort to reduce paperwork and respondent

[50] Some filers are eligible to file the Form 5500–SF, but choose to file a Form 5500 and attach Schedule I and/or other schedules because they find it less burdensome to do so in their particular situation. Counts of these filings are adjusted to reflect what they would have filed if they had chosen to file the Form 5500–SF.

[51] Section 1 of ERISA states the ''Congressional findings and declaration of policy.'' Of relevance to our consideration of these alternatives, section (b) states, in relevant part: ''It is hereby declared to be the policy of this chapter to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto . . . .'' 29 U.S.C. 1001(b).

burden, the DOL conducts a preclearance consultation program to allow the general public and Federal agencies to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA).[52] This helps to ensure that requested data will be provided in the desired format, reporting burden (time and financial resources) will be minimized, collection instruments will be clearly understood, and the impact of collection requirements on respondents is properly assessed. Currently, the DOL is soliciting comments concerning the proposed revision of the Form 5500 Annual Return/Report, which is an information collection request (ICR) subject to the PRA. The accompanying Notice of Proposed Forms Revisions includes a separate PRA discussion that includes tables breaking out the average time for filing the Form 5500, Form 5500–SF, and each schedule, broken down by pension plans (sub-grouped by large plans filing the Form 5500, small plan filing the Form 5500, small plan filing the Form 5500–SF), welfare plans that include health benefits (sub-grouped by large plans and small, unfunded, combination unfunded/fully insured, or funded with a trust 5500–SF), welfare plans that do not include health benefits (sub-grouped by large plans filing the Form 5500, small plan filing the Form 5500, small plan filing the Form 5500–SF), and DFEs (sub-grouped by master trusts, CCTs, PSAs, 103–1IEs, GIAs, and DCGs). The discussion also includes a table with the estimated PRA burdens attributable the Form 5500 Annual Return/Report broken down by the portions allocated to the DOL and the IRS. The DOL is also submitting revisions to the Form M–1 and Summary Annual Report ICRs. A copy of the ICRs may be obtained by contacting the person listed in the PRA Addressee section below. The DOL has submitted a copy of the proposed revisions to the Office of Management and Budget (OMB) in accordance with 44 U.S.C. 3507(d) for its review of the DOL's information collection. The DOL and OMB are particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronically delivered responses).

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503 and marked ''Attention: Desk Officer for the Employee Benefits Security Administration.'' Comments can also be submitted by Fax: 202–395–5806 (this is not a toll-free number), or by email: *OIRA_submission@omb.eop.gov.* OMB requests that comments be received by October 15, 2021, which is 30 days from publication of the proposed rule to ensure their consideration.

PRA Addressee: Address requests for copies of the ICRs to James Butikofer, Office of Regulations and Interpretations, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N–5655, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745; Email: *ebsa.opr@dol.gov.* These are not toll-free numbers. ICRs submitted to OMB also are available at *http://www.RegInfo.gov.*

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[53] imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act[54] and are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis (IRFA) of the proposed rule. The DOL has determined that this proposed rule is likely to have a significant impact on a substantial number of small entities. Therefore, the DOL provides its IRFA of the proposed rule, below.

For purposes of this IRFA, an entity is considered a small entity if it is an employee benefit plan with fewer than 100 participants.[55] The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). The basis of EBSA's definition of a small entity for this IRFA is found in section 104(a)(2) of ERISA, which permits the Secretary to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. The DOL has consulted with the SBA Office of Advocacy concerning use of this participant count standard for RFA purposes.[56] The DOL seeks comment on the appropriateness of continuing to use this size standard.

The following subsections address specific components of an IRFA, as required by the RFA.

3.1. Need for and Objectives of the Rule

This proposal would amend the DOL's reporting regulations relating to the annual reporting and disclosure requirements to implement the forms changes that are set forth in the NPFR published concurrently with this notice of proposed rulemaking. DOL strives to tailor reporting requirements to minimize reporting costs, while ensuring that the information necessary to secure ERISA rights is adequately available. The optimal design for reporting requirements changes over time. In addition, the technologies available to manage and transmit information continually advance.

[52] 44 U.S.C. 3506(c)(2)(A) (1995).

[53] 5 U.S.C. 601 *et seq.* (1980).

[54] 5 U.S.C. 551 *et seq.* (1946).

[55] While some large employers may have small plans, in general, small employers maintain most small plans. The Form 5500 Annual Return/Report impacts any employer in any private sector industry who chooses to sponsor a plan. The DOL is unable to locate any data linking employer revenue to plans to determine the relationship between small plans and small employers in industries whose SBA size standard is revenue-based. For a separate project, the DOL purchased data on ESOPs that file the Form 5500 and on defined contribution pension plans that file the Form 5500–SF from Experian Information Solutions, Inc. The Experian dataset provides the number of employees for the plan sponsor. By merging these data with internal DOL data sources, the DOL determined the relationship between small plans and small employers in industries whose SBA size standard is based on a threshold number of employees that varies from 100 to 1,500 employees. Based on these data, the DOL estimates that over 97 percent of small retirement plans and over 80 percent of small health plans are sponsored by employers with fewer than 100 employees. The DOL estimates that over 99 percent of small retirement plans and over 97 percent of small health plans are sponsored by employers with fewer than 1,500 employees. Thus, the DOL believes that assessing the impact of these proposed rules on small plans is an appropriate substitute for evaluating the effect on small entities.

[56] Memorandum received from the U.S. Small Business Administration, Office of Advocacy on July 10, 2020.

Therefore, it is incumbent on the Agencies to revise their reporting requirements from time to time to keep pace with such changes. The proposed forms revisions, and associated DOL regulatory amendments in the proposal, are intended to implement the reporting requirements required by the SECURE Act, taking into account certain recent changes in markets, other law, and technology, many of which are referred to above in this document.

3.2. Affected Small Entities

The proposal would change the current method of counting covered participants for purposes of determining when a defined contribution plan may file as a small plan and whether the plan may be exempt from the audit requirement from the current requirement. Specifically, the proposal would allow plans to count just the number of participants/beneficiaries with account balances as of the beginning of the plan year, as compared to the current rule that counts all the employees eligible to participant in the plan. This change would allow an estimated 19,442 large defined contribution plans to be re-defined and file as small defined contribution plans. The estimated distribution of these plans by amount of assets is shown in Table 6.

TABLE 6—DISTRIBUTION OF LARGE DC PENSION PLANS TO BE REDEFINED AS SMALL FILERS, BY TYPE OF PLAN AND AMOUNT OF ASSETS, 2018

Amount of assets	Total	Single-employer plans	Multiemployer plans	Multiple-employer plans
Total Plans	19,442	18,974	134	334
None or not reported	50	50	.....	.....
$1–24K	221	220	.....	1
25–49K	183	182	.....	1
50–99K	312	306	2	4
100–249K	816	800	3	13
250–499k	1,276	1,260	2	14
500–999K	2,561	2,522	4	34
1–2.49M	6,158	6,049	3	106
2.5–4.9M	4,790	4,683	7	100
5–9.9M	2,316	2,259	10	48
10–24.9M	592	556	27	10
25–49.9M	80	53	25	2
50–74.9M	26	12	14	.....
75–99.9M	12	6	6	.....
100–149.9M	9	6	3	.....
150–199.9M	13	4	9	.....
200–249.9M	8	3	5	.....
250–499.9M	12	1	11	.....
500–999.9M	4	3	1	.....
1–2.49B	2	1	1	.....

As described in the regulatory impact analysis, above, the DOL estimates that 100 DCGs will form in the first year, filing for 15,350 small plans. These plans would no longer need to file a Form 5500 or Form 5500–SF; their DCG filing a complete Form 5500 Annual Return/Report in accordance with its instructions, including the requirement to include the proposed Schedule DCG for each individual participating plan, would satisfy the reporting requirements for those plans. There also may be some cases in which sponsors of small plans decide to instead participate in the pooled employer plan, which would also result in a number of small plans either being terminated or possibly merged into the pooled employer plan and no longer filing a Form 5500 or Form 5500–SF. As discussed above, the DOL is estimating that 2,251 small employers/plans will join a pooled employer plan.[57]

Due to the change in the requirements to be considered a small plan on the basis of account balance, in total, approximately 609,695 defined contribution pension plans covering fewer than 100 participants with account balances would be eligible to comply with annual reporting requirements applicable to small plans, where previously approximately 590,254 defined contribution plans were filing as small plans. In this regard, in total there would be now 648,837 small plans where previously were 629,397. Estimates of the number of small pension plans are based on 2018 Form 5500 filing data.

Additionally, the proposed changes in annual reporting requirements would affect MEWAs. In the 2018 calendar year, there were 143 plan MEWAs and six non-plan MEWAs with fewer than 100 participants that filed a Form M–1.[58]

3.3. Impact of the Rule

While many small plans could experience a reduced burden as a result of the proposed changes, it is the 20,005 large plans filing under the proposed regulations, that we estimate would experience a significant impact. Specifically, 19,442 defined contribution plans due to the change in the definition of who can file as a small plan and be eligible for an audit waiver,

[57] For the calculation of the total number of employers in pooled employer plans it is first assumed that 80 percent of all the employers who would participate in a pooled employer plan are currently providing benefits through small plans, and the remaining 20 percent through large plans. This distribution would apply to the registrant that has already exceptionally listed 2000 employers (which would then be divided in 1600 small participating plans and 400 large participating plans) and to the other 74 pooled plan providers assumed to be created. As explained, it is also assumed that each one of these other 74 pooled plan providers would be servicing in total 11 employers. Therefore, the total number of small participating plans in a pooled employer plan is calculated as: 1,600 + (74 * 11 * 0.8) = 2,251 (rounded).

[58] These calculations are based on internal DOL calculations based on 2018 Form M–1 filings. In 2018, of the 640 total plan MEWAs, 143 reported having fewer than 100 participants, of which 69 had zero participants. Of the 47 non-plan MEWAs, six reported having fewer than 100 participants all of which had zero participants.

and 563 large participating plans that could provide benefits through pooled employer plans and be covered by the pooled employer plan single audit rather than a separate audit if they sponsored their own single employer plan. An estimated 11,362 of those affected large plans currently provide the IQPA report and audited financial statements that would save in audit costs under the proposal.[59] There is variation in filing requirements based on the characteristics of a plan and types of assets held. However, these plans would no longer need to attach the IQPA report (audit) and other schedules required of large plans with its annual return/report. As described earlier in this document,[60] the Department estimates that there could be an audit cost reduction of $7,500 for each one of these 11,362 plans. Plans may still conduct an audit, even if there is no requirement. It is estimated that 25 percent of plans could still conduct an audit. Data on the cost of an audit for these plans is not known and will vary based on plan size and complexity. An estimate of $7,500 is used to estimate the cost savings per year. These plans also would no longer be required to file the Schedule H, but would need to file the Schedule I. The difference in burden between filing Schedule H and Schedule I is estimated to be $770 per year.[61]

Table 6 above shows that number of plans by the amount of assets in the plans. This shows an estimate of 5,369 plans (those with less than $1 million in assets) that would see a costs savings of about one percent of plan assets.[62]

The establishment of DCGs, the use of Schedules DCG ($178 per plan), Schedule MEP ($20 for most MEPs and $26 per pooled employer plan), and the other changes could impact a substantial number of small plans, as discussed above, but the impacts per plan are small in magnitude and do not meet the qualifications for a significant impact for this analysis.

3.4. Duplicate, Overlapping, or Relevant Federal Rules

The DOL is unaware of any relevant Federal rules for small plans that duplicate, overlap, or conflict with these regulations.

3.5. Description of Steps Taken To Minimize the Impact on Small Entities

These proposed regulations and related changes to the Form 5500 Annual Return/Report generally implement or otherwise relate to SECURE Act changes to ERISA and the Code, and do not include significant modifications to existing small plan simplified reporting options other than expanding the number of plans that will be eligible for simplified reporting options by reason of the proposed change in the method of counting participants for determining small plans versus large plan status. Small pension plans that are invested in ''eligible'' plan assets and otherwise meet certain requirements are able to use a simplified reporting option of filing Form 5500–SF, which was established by regulation in part to comply with provisions of the Pension Protection Act requiring a simplified form of reporting for plans with fewer than 25 participants. In light of the fact that the majority of small plans required to file an ERISA annual report cover fewer than 25 participants, the simplified reporting option also constitutes the Department's efforts to further reduce the information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506 (c)(4). The Department, in developing the proposed regulatory changes for Form 5500 filings by DCGs, carried forward an audit waiver for small plans participating in a DCG consolidated Form 5500 filing. We also, in developing the Schedule MEP filing requirements for pooled employer plans and other MEPs, did not expand small plan reporting requirements. We generally limited the information collection to consolidating information onto the Schedule MEP information that is already reported elsewhere by MEPs on the current Form 5500, as discussed elsewhere in this preamble and in the NPFR. Overall, the DOL believes that the proposed changes to the reporting requirements reduce the burden on small plans, while allowing the DOL to collect sufficient information for it to fulfill its statutory responsibilities.

4. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector.[63] For purposes of the Unfunded Mandates Reform Act, as well as Executive Order 12875,[64] this proposal does not include any Federal mandate that the DOL expects would result in such expenditures by State, local, or tribal governments, or the private sector.

5. Federalism Statement

Executive Order 13132 outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have ''substantial direct effects'' on the States, the relationship between the National Government and States, or on the distribution of power and responsibilities among the various levels of government.[65] Federal agencies promulgating regulations that have federalism implications must consult with State and local officials and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the rule.

In the DOL's view, these proposed regulations would not have federalism implications because they would not have direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among various levels of government. These proposed rules do not have federalism implications because they would have no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements proposed to be

[59] To estimate the number of large plans currently providing the IQPA report and audited financial statements the DOL identified those large plans are most likely to be re-defined as small plans and have filed Schedule H in 2018, as estimated on the 2018 Form 5500 Pension Research Files. Note that an 80 to 120 participant transition provision allows a plan that covers fewer than 100 participants to continue taking advantage of the simplified option or exemption, as applicable, until they reach 121 participants, therefore not all plans with 100 or more participants will file a plan in a given year.

[60] *See* fns. 47–49 *supra.*

[61] The methodology DOL uses results in estimates that it will take a small pension plan approximately 12 hours to file a Schedule H, compared to two hours and six minutes to file a Schedule I. *See* ''Methodology'' section starting, supra, at page 56 for a discussion of the burden estimating methodology.

[62] Plan asset data reflects data reported on 2018 Form 5500 filings.

[63] 2 U.S.C. 1501 *et seq.* (1995).

[64] Enhancing the Intergovernmental Partnership, 58 FR 58093 (Oct. 28, 1993).

[65] Federalism, *supra* note 6.

implemented in these rules do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the National Government and the States. The DOL welcomes input from affected States regarding this assessment.

List of Subjects in 29 CFR Part 2520

Accounting, Employee benefit plans, Freedom of information, Pensions, Public assistance programs, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, 29 CFR part 2520 is proposed to be amended as follows:

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

■ 1. The authority citation for part 2520 is revised to read as follows:

Authority: 29 U.S.C. 1002(44), 1021–1025, 1027, 1029–31, 1059, 1134, and 1135; and Secretary of Labor's Order 1–2011, 77 FR 1088. Sec. 2520.101–2 also issued under 29 U.S.C. 1132, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Sec. 2520.101–5 also issued under 29 U.S.C. 1021 note; sec. 501, Pub. L. 109–280, 120 Stat. 780; sec. 105(a), Pub. L. 110–458, 122 Stat. 5092. Secs. 2520.102–3, 2520.104b–1, and 2520.104b–3 also issued under 29 U.S.C. 1003, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note; sec. 1510, Pub. L. 105–34, 111 Stat. 1068.

■ 2. In § 2520.103–1, revise paragraphs (a)(2), (b) introductory text, (b)(1), (c)(1), (c)(2)(i), and (c)(2)(ii)(D) and (E) and add paragraphs (c)(2)(ii)(F) and (G) to read as follows:

§ 2520.103–1 Contents of the annual report.

(a) * * *

(2) Under the authority of subsections 104(a)(2), 104(a)(3), and 110 of the Act, section 1103(b) of the Pension Protection Act of 2006, and section 202 of the SECURE Act, a simplified report, limited exemption, or alternative method of compliance is prescribed for employee welfare and pension benefit plans, as applicable. A plan filing a simplified report or electing the limited exemption or alternative method of compliance shall file an annual report containing the information prescribed in paragraph (b) or (c) of this section, as applicable, and shall furnish a summary annual report as prescribed in § 2520.104b–10.

(b) *Contents of the annual report for plans with 100 or more participants electing the limited exemption or alternative method of compliance.* Except as provided in paragraphs (d) and (f) of this section and in §§ 2520.103–2, 2520.103–14, and 2520.104–44, the annual report of an employee benefit plan covering 100 or more participants at the beginning of the plan year which elects the limited exemption or alternative method of compliance described in paragraph (a)(2) of this section shall include:

(1) A Form 5500 ''Annual Return/Report of Employee Benefit Plan'' and any statements or schedules required to be attached to the form, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule C (Service Provider Information), Schedule D (DFE/Participating Plan Information), Schedule G (Financial Transaction Schedules), Schedule H (Financial Information), Schedule SB (Single-Employer Defined Benefit Plan Actuarial Information), Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information), Schedule MEP (Multiple Employer Plan), Schedule R (Retirement Plan Information), and other financial schedules described in § 2520.103–10. See the instructions for this form.

* * * * *

(c) * * *

(1) Except as provided in paragraphs (c)(2), (d), (e), and (f) of this section, and in §§ 2520.103–14, 2520.104–51, 2520.104–43, 2520.104–44, 2520.104a–6, and 2520.104a–9, the annual report of an employee benefit plan that covers fewer than 100 participants at the beginning of the plan year shall include a Form 5500 ''Annual Return/Report of Employee Benefit Plan'' and any statements or schedules required to be attached to the form, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule D (DFE/Participating Plan Information), Schedule I (Financial Information—Small Plan), Schedule SB (Single Employer Defined Benefit Plan Actuarial Information), Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information), Schedule MEP (Multiple Employer Plan), and Schedule R (Retirement Plan Information). See the instructions for this form.

(2)(i) The annual report of an employee pension benefit plan or employee welfare benefit plan and that covers fewer than 100 participants at the beginning of the plan year and that meets the conditions in paragraph (c)(2)(ii) of this section with respect to a plan year may, as an alternative to the requirements of paragraph (c)(1) of this section, meet its annual reporting requirements by filing the Form 5500–SF ''Short Form Annual Return/Report of Small Employee Benefit Plan'' and any statements or schedules required to be attached to the form, Schedule SB (Single Employer Defined Benefit Plan Actuarial Information) and Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information), completed in accordance with the instructions for the form. See the instructions for this form.

(ii) * * *

(D) Is not a multiemployer plan;

(E) Is not a plan subject to the Form M–1 requirements under § 2520.101–2;

(F) Is not a multiple employer pension plan, including a pooled employer plan described in section 3(43) of the Act and a multiple employer defined contribution pension plan described in § 2510.3–55 of this chapter; and

(G) Is not a DCG reporting arrangement described in § 2520.104–51.

* * * * *

■ 3. In § 2520.103–5, revise paragraph (a) introductory text to read as follows:

§ 2520.103–5 Transmittal and certification of information to plan administrator for annual reporting purposes.

(a) *General.* In accordance with section 103(a)(2) of the Act, an insurance carrier or other organization which provides benefits under the plan or holds plan assets, a bank or similar institution which holds plan assets, or a plan sponsor shall transmit and certify such information as needed by the administrator to file the annual report under section 104(a)(1) of the Act and § 2520.104a–5, § 2520.104a–6, or § 2520.104a–9:

* * * * *

■ 4. In § 2520.103–10:

■ a. Revise paragraphs (a) and (b)(1) and (2);

■ b. Redesignate paragraph (c) as paragraph (d);

■ c. Add a new paragraph (c); and

■ d. In newly redesiganted pargraph (d), remove ''paragraphs (b)(1), (b)(2) or (b)(6)'' and add ''paragraph (b)(1), (2), or (6)'' in its place.

The revisions and addition read as follows:

§ 2520.103–10 Annual report financial schedules.

(a) *General.* The administrator of a plan filing an annual report pursuant to § 2520.103–1(a)(2), the report for a group insurance arrangement pursuant to § 2520.103–2, or the report for a defined contribution pension plan

group (DCG) reporting arrangement pursuant to § 2520.103–14, shall, as provided in the instructions to the Form 5500 ''Annual Return/Report of Employee Benefit Plan,'' include as part of the report the separate financial schedules described in paragraph (b) of this section.

(b) * * *

(1) *Assets held for investment.* (i) A schedule of all assets held for investment purposes at the end of the plan year (see § 2520.103–11) with assets aggregated and identified by:

(A) Identity of issue, borrower, lessor or similar party to the transaction (including a notation as to whether such party is known to be a party in interest);

(B) Description of investment including maturity date, rate of interest, collateral, par, or maturity value; (including whether the investment is a hard-to-value asset);

(C) Cost;

(D) Current value, and, in the case of a loan, the payment schedule;

(E) The asset category in which the asset was reported on the Schedule H;

(F) The Central Index Key (CIK) number, Legal Entity Identifier (LEI) Code, or National Association of Insurance Commissioners (NAIC) Company Code, or other government registration or identity number for the investment described in paragraphs (b)(1)(i)(A) and (B) of this section, or if no government number is available, a market or exchange registration or identity number; and

(G) In the case of individual account plans, whether the investment is a designated investment alternative (DIA) or a qualified default investment alternative (QDIA), and for each such DIA and QDIA with respect to which the return is not fixed, the total annual operating expenses on the latest 404a–5 statement provided to participants during the plan year.

(ii) [Reserved]

(2) *Assets acquired and disposed within the plan year.* (i) A schedule of all assets acquired and disposed of within the plan year (see § 2520.103–11) with assets aggregated and identified by:

(A) Identity of issue, borrower, issuer or similar party;

(B) Descriptions of investment including maturity date, rate of interest, collateral, par, or maturity value;

(C) Cost of acquisitions; and

(D) Proceeds of dispositions.

(ii) [Reserved]

* * * * *

(c) *Presentation of investment assets in commingled trusts and direct filing entities (DFEs).* (1) Except as provided in the Form 5500 and the instructions thereto or for filings by direct filing entities or DCG reporting arrangements, in the case of assets or investment interests of two or more plans maintained in one trust, entries on the schedule of assets held for investment purposes at the end of the plan year and the schedule of assets acquired and disposed of during the plan year shall be completed by including the plan's allocable portion of the trust.

(2) In the case of direct filing entities and DCG reporting arrangements required to file a schedule of assets held for investment purposes at the end of the plan year and the schedule of assets acquired and disposed of during the plan year, the entries on the schedules shall be completed by including the assets held by the DFE or in the DCG reporting arrangement's trust and shall include the number of plans with an allocable interest in each listed investment.

* * * * *

■ 5. Add § 2520.103–14 to read as follows:

§ 2520.103–14 Contents of the annual report for defined contribution pension plan group (DCG) reporting arrangements.

(a) *General.* A defined contribution pension plan group reporting arrangement as described in § 2520.104–51(c) (''DCG reporting arrangement'') that files a consolidated annual report pursuant to § 2520.104–51 shall include in such report the items set forth in paragraph (b) of this section, and shall furnish a summary annual report as prescribed in § 2520.104b–10.

(b) *Contents of the annual report for DCG reporting arrangement.* (1) A Form 5500 ''Annual Return/Report of Employee Benefit Plan'' and any statements or schedules required to be attached to the form, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule C (Service Provider Information), Schedule D (DFE/Participating Plan Information), Schedule G (Financial Transaction Schedules), Schedule H (Financial Information), Schedule DCG (Individual Plan Information), Schedule R (Retirement Plan Information), and the other financial schedules referred to in § 2520.103–10, completed in accordance with the instructions for the form.

(2) A report of an independent qualified public accountant for the DCG trust.

(3) Separate financial statements for the DCG reporting arrangement trust described in § 2520.104–51(c)(2)(i) (in addition to the information required by paragraph (b)(1) of this section), if such financial statements are prepared in order for the independent qualified public accountant to form the opinion required by section 103(a)(3)(A) of the Act and paragraph (b)(6) of this section. These financial statements shall include the following:

(i) A statement of all trust assets and liabilities at current value presented in comparative form for the beginning and end of the year. The statement of trust assets and liabilities shall include the assets and liabilities required to be reported on the Form 5500; however, the assets and liabilities may be aggregated into categories in a manner other than that used on Form 5500.

(ii) Separate or combined statements of all trust income and expenses and changes in net assets, which includes the categories of income, expense, and changes in assets required to be reported on the Form 5500; however, the income, expense, and changes in assets may be aggregated into categories in a manner other than that used on Form 5500.

(4) Notes to the financial statements described in paragraph (b)(1) or (2) of this section which contain a description of the accounting principles and practices reflected in the financial statements and, if applicable, variances from generally accepted accounting principles; a description of the DCG reporting arrangement including any significant changes in the arrangement made during the period and the impact of such changes on benefits; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the DCG reporting arrangement; an explanation of the differences, if any, between the information contained in the separate financial statements and the assets, liabilities, income, expenses and changes in net assets as required to be reported on the Form 5500; and any other matters necessary to fully and fairly present the financial condition of the DCG reporting arrangement.

(5) In the case of a DCG reporting arrangement some or all of the assets of which are held in a pooled separate account maintained by an insurance carrier, or in a common or collective trust maintained by a bank, trust company or similar institution, a copy of the annual statement of assets and liabilities of such account or trust for the fiscal year of the account or trust which ends with or within the plan year for which the annual report is made as required to be furnished by such account or trust under § 2520.103–5(c). See §§ 2520.103–3 and 2520.103–4 for

reporting requirements for plans some or all of the assets of which are held in a pooled separate account maintained by an insurance company, or a common or collective trust maintained by a bank or similar institution, and see § 2520.104–51(b)(2) for when the term ''DCG reporting arrangement'' or ''DCG'' shall be used in place of the term ''plan.''

(6) In the case of a plan participating in a DCG reporting arrangement covering 100 or more participants at the beginning of the plan year, the Schedule DCG for each participating plan shall include the following as provided in the instructions to the Schedule DCG:

(i) A report of an independent qualified public accountant for the participating plan.

(ii) Separate financial statements and financial schedules described in § 2520.103–10 for the plan, if such financial statements and schedules are prepared in order for the independent qualified public accountant to form the opinion required by section 103(a)(3)(A) of the Act and paragraph (b)(6) of this section. The financial statement shall include the information set forth in § 2520.103–1(b)(2).

(iii) Notes to the financial statements described in paragraph (b)(2)(i) of this section, which contain the information set forth in § 2520.103–1(b)(3).

(iv) In the case of a participating plan, some or all of the assets of which are held in a pooled separate account maintained by an insurance company, or a common or collective trust maintained by a bank or similar institution, the information described in § 2520.103–1(b)(4).

(c) *Technical requirements.* The accountant's report required for the DCG trust and any participating plan subject to the requirements in paragraph (b)(6) of this section—

(1) Shall be dated;

(2) Shall be signed manually;

(3) Shall indicate the city and state where issued;

(4) Shall identify without detailed enumeration the financial statements and schedules covered by the report;

(5) Shall state whether the audit was made in accordance with generally accepted auditing standards;

(6) Shall designate any auditing procedures deemed necessary by the accountant under the circumstances of the particular case, which have been omitted, and the reasons for their omission. Authority for the omission of certain procedures which independent accountants might ordinarily employ in the course of an audit made for the purpose of expressing the opinions required by paragraph (b)(5)(iii) of this section is contained in § 2520.103–8; and

(7) Shall state clearly:

(i) The opinion of the accountant in respect of the financial statements and schedules covered by the report and the accounting principles and practices reflected therein; and

(ii) The opinion of the accountant as to the consistency of the application of the accounting principles with the application of such principles in the preceding year, or as to any changes in such principles which have a material effect on the financial statements.

(8) Any matters to which the accountant takes exception shall be clearly identified, the exception thereto specifically and clearly stated, and, to the extent practicable, the effect of the matters to which the accountant takes exception on the related financial statements given. The matters to which the accountant takes exception shall be further identified as to:

(i) Those that are the result of DOL regulations; and

(ii) All others.

(d) *Electronic filing requirement.* See § 2520.104a–2 and the instructions for the Form 5500 ''Annual Return/Report of Employee Benefit Plan'' for electronic filing requirements. The common plan administrator for each plan whose reporting obligations are satisfied by a DCG filing under this section must maintain an original copy of the DCG filing, with all required signatures, as part of the DCG's records.

■ 6. Add § 2520.104–51 to read as follows:

§ 2520.104–51 Alternative method of compliance for defined contribution pension plan group (DCG) reporting arrangements.

(a) *General.* Under the authority of section 110 of the Act and section 202 of the SECURE Act, the plan administrator common to each plan (''common plan administrator''), as described in paragraph (c)(2)(iii) of this section, satisfies the obligation to file an annual report for each of the plans participating in the DCG reporting arrangement described in paragraph (c) of this section if the participating plan meets the requirements of paragraph (b) of this section.

(b) *Application.* (1) The alternative method of compliance set out in this section is available only for an individual account or defined contribution pension plan in a plan year in which:

(i) Such plan participates in a defined contribution pension plan group (DCG) reporting arrangement described in paragraph (c) of this section; and

(ii) A consolidated annual report containing the items set forth in § 2520.103–14 has been filed with the Secretary of Labor in accordance with § 2520.104a–9 by the common plan administrator (as described in paragraph (c)(2)(iii) of this section) for all of the plans participating in the DCG reporting arrangement (as described in paragraph (c) of this section).

(2) For purposes of this section, the term ''DCG reporting arrangement'' or ''common plan administrator'' shall be used in place of the terms ''plan'' and ''plan administrator,'' in §§ 2520.103–3, 2520.103–4, 2520.103–6, 2520.103–8, 2520.103–9, and 2520.103–10 and elsewhere in subpart C of this part and this subpart, as applicable.

(c) *Defined contribution pension plan group (DCG) reporting arrangement.* An arrangement is only a ''DCG reporting arrangement'' if all plans participating in the arrangement—

(1) Are individual account plans or defined contribution plans as defined in section 3(34) of the Act;

(2) Have—

(i) The same trustee as described in section 403(a) of the Act (''common trustee'') and trust(s) (''common trust'');

(ii) The same one or more named fiduciaries as described in section 402(a) of the Act (''common named fiduciaries''), except that nothing in this paragraph (c)(2)(ii) precludes an individual employer acting as an additional named fiduciary with respect to the individual plan it sponsors;

(iii) A designated plan administrator that is the same plan administrator as defined in section 3(16)(A) of the Act (''common plan administrator''); and

(iv) Plan years beginning on the same date (''common plan year'');

(3) Provide the same investments or investment options (''common investments or investment options'') to participants and beneficiaries; and

(4) Have the investment assets held in a single trust of the DCG reporting arrangement, and the participating plan:

(i) Do not hold any employer securities at any time during the plan year;

(ii) At all times during the plan year, are 100% invested in assets that have a readily determinable fair market value as described in § 2520.103–1(c)(2)(ii)(C);

(iii) Are either audited by an independent qualified public accountant (IQPA) or satisfies the audit waiver conditions in § 2520.104–46(b)(1)(i)(A)(*1*) and (b)(1)(i)(B) and (C);

(iv) Are not a multiemployer plan; and

(v) Are not a multiple employer pension plan, including a pooled employer plan described in section

3(43) of the Act and multiple employer defined contribution pension plans described in § 2510.3–55 of this chapter.

(d) *Limitations.* The alternative method of reporting set out in this section does not relieve the administrator of a defined contribution pension plan participating in a DCG reporting arrangement described in paragraph (c) of this section from any other requirements of Title I of the Act, including the provisions which require that plan administrators furnish copies of the summary plan description to participants and beneficiaries (section 104(b)(1)), furnish certain documents to the Secretary of Labor upon request (section 104(a)(6)), authorize the Secretary of Labor to collect information and data from employee benefit plans for research and analysis (section 513), and furnish a copy of a summary annual report to participants and beneficiaries of the plan, as required by section 104(b)(3) of the Act.

■ 7. In § 2520.104a–5, revise paragraph (a) introductoty text to read as follows:

§ 2520.104a–5 Annual reporting filing requirements.

(a) *Filing obligation.* Except as provided in §§ 2520.104a–6 and 2520.104a–9, the administrator of an employee benefit plan required to file an annual report pursuant to section 104(a)(1) of the Act shall file an annual report containing the items prescribed in § 2520.103–1 within:

* * * * *

■ 8. Add § 2520.104a–9 to read as follows:

§ 2520.104a–9 Annual reporting for defined contribution pension plan group (DCG) reporting arrangements.

(a) *General.* A defined contribution pension plan group (DCG) reporting arrangement described in § 2520.104–51(c) that files an annual report in accordance with the terms of paragraphs (b) and (c) of this section shall be deemed to have filed such a report for purposes of § 2520.104–51.

(b) *Date of filing.* The annual report shall be filed within seven months after the close of the plan year of the DCG reporting arrangement, unless extended. See ''When to file'' instructions of the appropriate Annual Return/Report Form.

(c) *Where to file.* The annual report prescribed in § 2520.103–14 shall be filed electronically in accordance with the instructions to the Annual Return/Report Form.

■ 9. In § 2520.104b–10:

■ a. In paragraph (d)(3):

■ i. Revise the ''Summary Annual Report for (name of plan)'';

■ ii. Add paragraphs 11 and 12 immediately following paragraph 10 under ''Your Rights to Additional Information''; and

■ iii. Remove the last undesignated paragraph and add two undesignated paragraphs in its place; and

■ b. Remove the appendix to the section; and

■ c. Add table 1 at the end of the section.

The revisions and additions read as follows:

§ 2520.104b–10 Summary Annual Report.

* * * * *

(d) * * *

(3) * * *

Summary Annual Report for (name of plan)

This is a summary of the annual report [insert as applicable either Form 5500 Annual Return/Report of Employee Benefit Plan or Form 5500–SF Annual Return/Report of Small Employee Benefit Plan] of [insert name of plan and EIN/PN] for [insert period covered by this report]. The [insert as applicable either Form 5500 or Form 5500–SF] annual report has been filed with the Employee Benefits Security Administration, as required under the Employee Retirement Income Security Act of 1974 (ERISA). Your plan is a [insert a brief description of the plan based on the plan characteristic codes listed for the plan on the Form 5500, including whether it is a defined contribution or defined benefit plan, and whether the plan is a pooled employer plan, another type of multiple employer plan, a single employer plan].

[If the plan is participating in a DCG reporting arrangement]:

Your plan participates in an annual reporting arrangement that files a consolidated Form 5500 Annual Report for all the separate plans in the arrangement. This summary includes aggregate information on all the participating plans from the consolidated Form 5500. The consolidated Form 5500 also includes a separate schedule (Schedule DCG) for each individual plan. As noted below regarding your rights to additional information, you have a right to receive a copy of the Schedule DCG relating to your plan on request from the plan administrator.]

* * * * *

Your Rights to Additional Information

* * * * *

■ 11. a Schedule DCG for plans participating in a consolidated group Form 5500 filing that includes your plan sponsor's name, EIN, total number of participants in your plan and basic financial information about the plan.

■ 12. a Schedule MEP, including name and EIN of the employers participating in the MEP, each participating employer's percentage of the total contributions (employer and employee) made by all employer participating in the MEP and aggregate account balance for each of the employer participating in the MEP.

* * * * *

[If the plan is participating in a DCG reporting arrangement]:

You also have the legally protected right to examine the annual report at the main office of the plan (address), (at any other location where the report is available for examination), and at the U.S. Department of Labor in Washington, DC, or to obtain a copy from the U.S. Department of Labor upon payment of copying costs. Requests to the Department should be addressed to: Public Disclosure Room, Room N–1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. The annual report is also available online at the Department of Labor website *www.efast.dol.gov*.

* * * * *

TABLE 1 TO § 2520.104B–10—THE SUMMARY ANNUAL REPORT (SAR) UNDER ERISA: A CROSS-REFERENCE TO THE ANNUAL REPORT

SAR item	Form 5500 large plan filer line items	Form 5500 small plan filer line items	Form 5500–SF filer line items
A. Pension Plan:			
1. Funding arrangement	Form 5500–9a	Same	Not applicable.
2. Total plan expenses	Sch. H–2j	Sch. I–2j	Line 8h.
3. Administrative expenses	Sch. H–2i(5)	Sch. I–2h	Line 8f.
4. Benefits paid	Sch. H–2e(4)	Sch. I–2e	Line 8d.

TABLE 1 TO § 2520.104B–10—THE SUMMARY ANNUAL REPORT (SAR) UNDER ERISA: A CROSS-REFERENCE TO THE ANNUAL REPORT—Continued

SAR item	Form 5500 large plan filer line items	Form 5500 small plan filer line items	Form 5500–SF filer line items
5. Other expenses	Sch. H—Subtract the sum of 2e(4) & 2i(5) from 2j.	Sch. I–2i	Line 8g.
6. Total participants	Form 5500–6f	Same	Line 5b.
6. Value of plan assets (net):			
a. End of plan year	Sch. H–1l [Col. (b)]	Sch. I–1c [Col. (b)]	Line 7c [Col. (b)].
b. Beginning of plan year	Sch. H–1l [Col. (a)]	Sch. I–1c [Col. (a)]	Line 7c [Col. (a)].
8. Change in net assets	Sch. H—Subtract 1l [Col. (a)] from 1l [Col. (b)].	Sch. I—Subtract 1c [Col. (a) from Col. (b)].	Line 7c—Subtract Col. (a) from Col. (b).
9. Total income	Sch. H–2d	Sch. I–2d	Line 8c.
a. Employer contributions	Sch. H–2a(1)(A) & 2a(2) if applicable.	Sch. I–2a(1) & 2b if applicable	Line 8a(1) if applicable.
b. Employee contributions	Sch. H–2a(1)(B) & 2a(2) if applicable.	Sch. I–2a(2) & 2b if applicable	Line 8a(2) & 8a(3) if applicable.
c. Participating employer's percentage of the total contributions (employer and employee) made by all employers participating in a MEP.	Sch. MEP Line 2c	Sch. MEP Line 2c	Not applicable.
d. Aggregate account balance of the employer participating in a MEP (determined as the sum of the account balances of the employees of such employer (including the beneficiaries of such employees).	Sch. MEP Line 2d	Sch. MEP Line 2d	Not applicable.
e. Gains (losses) from sale of assets.	Sch. H–2b(4)(C)	Not applicable	Not applicable.
f. Earnings from investments.	Sch. H—Subtract the sum of 2a(3), 2b(4)(C) and 2c from 2d.	Sch. I–2c	Line 8b.
11. Total insurance premiums	Total of all Schs. A–6b	Total of all Schs. A–6b	Not applicable.
12. Unpaid minimum required contribution (S–E plans) or Funding deficiency (ME plans):			
a. S–E Defined benefit plans.	Sch. SB–39	Same	Same.
b. ME Defined benefit plans.	Sch. MB–10	Same	Not applicable.
c. Defined contribution plans.	Sch. R–6c, if more than zero	Same	Line 12d.
13. Individual plan information for plans participating in a DCG reporting arrangement.	Schedule DCG	Same	Not applicable.
B. Welfare Plan:			
1. Name of insurance carrier	All Schs. A–1(a)	Same	Not applicable.
2. Total (experience rated and non-experienced rated) insurance premiums.	All Schs. A—Sum of 9a(1) and 10a.	Same	Not applicable.
3. Experience rated premiums	All Schs. A–9a(1)	Same	Not applicable.
4. Experience rated claims	All Schs. A–9b(4)	Same	Not applicable.
5. Value of plan assets (net):			
a. End of plan year	Sch. H–11 [Col. (b)]	Sch. I–1c [Col. (b)]	Line 7c [Col. (b)].
b. Beginning of plan year	Sch. H–11 [Col. (a)]	Sch. I–1c [Col. (a)]	Line 7c [Col. (a)].
6. Change in net assets	Sch. H—Subtract 1 [Col. (a)] from 1 [Col. (b)].	Sch. I—Subtract 1c [Col. (a)] from 1c [Col. (b)].	Line 7c—Subtract [Col. (a)] from 7c [Col. (b)].
7. Total income	Sch. H–2d	Sch. I–2d	Line 8c.
a. Employer contributions	Sch. H–2a(1)(A) & 2a(2) if applicable.	Sch. I–2a(1) & 2b if applicable	Line 8a(1) if applicable.
b. Employee contributions	Sch. H–2a(1)(B) & 2a(2) if applicable.	Sch. I–2a(2) & 2b if applicable	Line 8a(2) if applicable.
c. Gains (losses) from sale of assets.	Sch. H–2b(4)(C)	Not applicable	Not applicable.
d. Earnings from investments.	Sch. H—Subtract the sum of 2a(3), 2b(4)(C) and 2c from 2d.	Sch. I–2c	Line 8b.
8. Total plan expenses	Sch. H–2j	Sch. I–2j	Line 8h.
9. Administrative expenses	Sch. H–2i(5)	Sch. I–2h	Line 8f.
10. Benefits paid	Sch. H–2e(4)	Sch. I–2e	Line 8d.

TABLE 1 TO § 2520.104B–10—THE SUMMARY ANNUAL REPORT (SAR) UNDER ERISA: A CROSS-REFERENCE TO THE ANNUAL REPORT—Continued

SAR item	Form 5500 large plan filer line items	Form 5500 small plan filer line items	Form 5500–SF filer line items
11. Other expenses	Sch. H—Subtract the sum of 2e(4) & 2i(5) from 2j.	Sch. I–2i	Line 8g.

Signed at Washington, DC, this 2nd day of September, 2021.

Ali Khawar,

Acting Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2021–19713 Filed 9–14–21; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2021–0580; FRL–8967–01–R1]

Air Plan Approval; Rhode Island; 2015 Ozone NAAQS Interstate Transport Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Clean Air Act (CAA) requires each State Implementation Plan (SIP) to contain adequate provisions prohibiting emissions that will have certain adverse air quality effects in other states. The State of Rhode Island made a submission to the Environmental Protection Agency (EPA) to address these requirements for the 2015 ozone National Ambient Air Quality Standards (NAAQS). EPA is proposing to approve the submission for Rhode Island as meeting the requirement that each SIP contain adequate provisions to prohibit emissions that will significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

DATES: Written comments must be received on or before October 15, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2021–0580 at *https://www.regulations.gov,* or via email to *simcox.alison@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, 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. 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For 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.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109—3912, tel. (617) 918–1684, email *simcox.alison@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. Background

On October 1, 2015, EPA promulgated a revision to the ozone NAAQS (2015 ozone NAAQS), lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm).[1] Section 110(a)(1) of the CAA requires states to submit, within 3 years after promulgation of a new or revised standard, SIP submissions meeting the applicable requirements of section 110(a)(2).[2] One of these applicable requirements is found in section 110(a)(2)(D)(i)(I), otherwise known as the good neighbor provision, which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on other states due to interstate transport of pollution. There are two so-called ''prongs'' within CAA section 110(a)(2)(D)(i)(I). A SIP for a new or revised NAAQS must contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting air pollutants in amounts that will: Significantly contribute to nonattainment of the NAAQS in another state (prong 1) or interfere with maintenance of the NAAQS in another state (prong 2). EPA and states must give independent significance to prong 1 and prong 2 when evaluating downwind air quality problems under CAA section 110(a)(2)(D)(i)(I).[3]

We note that EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to prior ozone NAAQS in several regional regulatory actions, including the Cross-State Air Pollution Rule (CSAPR), which addressed interstate transport with respect to the 1997 ozone NAAQS as well as the 1997 and 2006 fine particulate matter

[1] National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

[2] SIP revisions that are intended to meet the applicable requirements of section 110(a)(1) and (2) of the CAA are often referred to as infrastructure SIPs and the applicable elements under section 110(a)(2) are referred to as infrastructure requirements.

[3] *See North Carolina* v. *EPA,* 531 F.3d 896, 909–911 (D.C. Cir. 2008).

standards,[4] the Cross-State Air Pollution Rule Update (CSAPR Update), and, most recently, the Revised CSAPR Update for the 2008 ozone NAAQS.[5] [6]

Through the development and implementation of CSAPR and other regional rulemakings pursuant to the good neighbor provision,[7] EPA, working in partnership with states, developed the following four-step interstate transport framework to address the requirements of the good neighbor provision for the ozone NAAQS: (1) Identify downwind air quality problems; (2) identify upwind states that impact those downwind air quality problems sufficiently such that they are considered ''linked'' and therefore warrant further review and analysis; (3) identify the emissions reductions necessary (if any), applying a multi-factor analysis, to prevent linked upwind states identified in step 2 from contributing significantly to nonattainment or interfering with maintenance of the NAAQS at the locations of the downwind air quality problems; and (4) adopt permanent and enforceable measures needed to achieve those emissions reductions.

EPA has released several documents containing information relevant to evaluating interstate transport with respect to the 2015 ozone NAAQS. First, on January 6, 2017, EPA published a notice of data availability (NODA) with preliminary interstate ozone transport modeling with projected ozone design values (DVs) for 2023 using a 2011 base year platform, on which we requested public comment.[8] In the NODA, EPA used the year 2023 as the analytic year for this preliminary modeling because that year aligns with the expected attainment year for Moderate ozone nonattainment areas for the 2015 ozone NAAQS.[9] On October 27, 2017, we released a memorandum (2017 memo) containing updated modeling data for 2023, which incorporated changes made in response to comments on the NODA, and noted that the modeling may be useful for states developing SIPs to address good neighbor obligations for the 2008 ozone NAAQS.[10] On March 27, 2018, we issued a memorandum (March 2018 memo) noting that the same 2023 modeling data released in the 2017 memo could also be useful for identifying potential downwind air quality problems with respect to the 2015 ozone NAAQS at step 1 of the four-step interstate transport framework. The March 2018 memo also included the then newly available contribution modeling results to assist states in evaluating their impact on potential downwind air quality problems for the 2015 ozone NAAQS under step 2 of the interstate transport framework. EPA subsequently issued two more memoranda in August and October 2018, providing additional information to states developing good neighbor SIP submissions for the 2015 ozone NAAQS concerning, respectively, potential contribution thresholds that may be appropriate to apply in step 2 of the framework, and considerations for identifying downwind areas that may have problems maintaining the standard at step 1 of the framework.[11]

On October 30, 2020, in the Notice of Proposed Rulemaking for the Revised CSAPR Update, EPA released and accepted public comment on updated 2023 modeling that used a 2016 emissions platform developed under the EPA/Multi-Jurisdictional Organization (MJO)/state collaborative project as the primary source for the base year and future year emissions data.[12] On March 15, 2021, EPA signed the final Revised CSAPR Update using the same modeling released at proposal.[13] Although Rhode Island relied on the modeling included in the March 2018 memo to develop its SIP submission as EPA had suggested, EPA now proposes to primarily rely on the updated and newly available 2016 base year modeling in evaluating these submissions. By using the updated modeling results, EPA is using the most current and technically appropriate information as the primary basis for this proposed rulemaking. EPA's independent analysis, which also evaluated historical monitoring data, recent DVs, and emissions trends, found that such information provides additional support and further substantiates the results of the 2016 base year modeling as the basis for this proposed rulemaking. Section III of this notice and the Air Quality Modeling technical support document (TSD) included in the docket for this proposal contain additional detail on this modeling.[14]

In the CSAPR, CSAPR Update, and the Revised CSAPR Update, EPA used a threshold of one percent of the NAAQS to determine whether a given upwind state was ''linked'' at step 2 of the interstate transport framework and would, therefore, contribute to downwind nonattainment and maintenance sites identified in step 1. If a state's impact did not equal or exceed the one percent threshold, the upwind state was not ''linked'' to a downwind air quality problem, and EPA, therefore, concluded the state would not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in the downwind states. However, if a state's impact equaled or exceeded the one percent threshold, the state's emissions were further evaluated in step 3, considering both air quality and cost considerations, to determine what, if

[4] *See* 76 FR 48208 (August 8, 2011).

[5] In 2019, the D.C. Circuit Court of Appeals remanded the CSAPR Update to the extent it failed to require upwind states to eliminate their significant contribution by the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a). *Wisconsin* v. *EPA,* 938 F.3d 303, 313 (D.C. Cir. 2019).

[6] The Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 86 FR 23054 (April 30, 2021), was signed by the EPA Administrator on March 15, 2021, and responded to the remand of the CSAPR Update, 81 FR 74504 (October 26, 2016), and the vacatur of a separate rule, the CSAPR Close-Out, 83 FR 65878 (December 21, 2018), by the D.C. Circuit. *Wisconsin* v. *EPA,* 938 F.3d 303; *New York* v. *EPA,* 781 F. App'x. 4 (D.C. Cir. 2019).

[7] In addition to the CSAPR rulemakings, other regional rulemakings addressing ozone transport include the NO_X SIP Call, 63 FR 57356 (October 27, 1998), and the Clean Air Interstate Rule (CAIR), 70 FR 25162 (May 12, 2005).

[8] *See* Notice of Availability of the Environmental Protection Agency's Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard (NAAQS), 82 FR 1733 (January 6, 2017).

[9] *Id.* at 1735.

[10] *See* Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), October 27, 2017, available in the docket for this action or at *https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices.*

[11] *See* Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, August 31, 2018) (''August 2018 memo''), and Considerations for Identifying Maintenance Receptors for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, October 19, 2018, available in the docket for this action or at *https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs.*

[12] *See* 85 FR 68964, 68981. The results of this modeling are included in a spreadsheet in the docket for this action. The underlying modeling files are available for public review in the docket for the Revised CSAPR Update (EPA–HQ–OAR–2020–0272).

[13] *See* 86 FR 23054 at 23075, 23164 (April 30, 2021).

[14] *See* ''Air Quality Modeling Technical Support Document for the Revised Cross-State Air Pollution Rule Update,'' 86 FR 23054 (April 30, 2021), available in the docket for this action. This TSD was originally developed to support EPA's action in the Revised CSAPR Update, as relating to outstanding good neighbor obligations under the 2008 ozone NAAQS. While developed in this separate context, the data and modeling outputs, including interpolated design values for 2021, may be evaluated with respect to the 2015 ozone NAAQS and used in support of this proposal.

any, emissions might be deemed ''significant'' and, thus, must be eliminated under the good neighbor provision. EPA is proposing to rely on the one percent threshold (which is 0.70 ppb) for the purpose of evaluating Rhode Island's contribution to nonattainment or maintenance of the 2015 ozone NAAQS in downwind areas.

Several D.C. Circuit court decisions address the issue of the relevant analytic year for the purposes of evaluating ozone transport air-quality problems. On September 13, 2019, the D.C. Circuit issued a decision in *Wisconsin* v. *EPA,* remanding the CSAPR Update to the extent that it failed to require upwind states to eliminate their significant contribution by the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a). 938 F.3d 303, 313.

On May 19, 2020, the D.C. Circuit issued a decision in *Maryland* v. *EPA* that cited the *Wisconsin* decision in holding that EPA must assess the impact of interstate transport on air quality at the next downwind attainment date, including Marginal area attainment dates, in evaluating the basis for EPA's denial of a petition under CAA section 126(b). *Maryland* v. *EPA,* 958 F.3d 1185, 1203–04 (D.C. Cir. 2020). The court noted that ''section 126(b) incorporates the Good Neighbor Provision,'' and, therefore, ''EPA must find a violation [of section 126] if an upwind source will significantly contribute to downwind nonattainment at the *next downwind attainment deadline.* Therefore, the agency must evaluate downwind air quality at that deadline, not at some later date.'' *Id.* at 1204 (emphasis added). EPA interprets the court's holding in *Maryland* as requiring the Agency, under the good neighbor provision, to assess downwind air quality by the next applicable attainment date, including a Marginal area attainment date under CAA section 181 for ozone nonattainment.[15] The Marginal area attainment date for the 2015 ozone NAAQS is August 3, 2021.[16] Historically, EPA has considered the full ozone season prior to the attainment date as supplying an appropriate analytic year for assessing good neighbor obligations. While this would be 2020 for an August 2021 attainment date (which falls within the 2021 ozone season running from May 1 to September 30), in this circumstance, when the 2020 ozone season is wholly in the past, it is appropriate to focus on 2021 to address good neighbor obligations to the extent possible by the 2021 attainment date. EPA does not believe it would be appropriate to select an analytical year that is wholly in the past, because the agency interprets the good neighbor provision as forward looking. *See* 86 FR 23054 at 23074; *see also Wisconsin,* 938 F.3d at 322. Consequently, in this proposal EPA will use the analytical year of 2021 to evaluate Rhode Island's good neighbor obligation with respect to the 2015 ozone NAAQS.

II. Rhode Island Submission

On September 23, 2020, Rhode Island submitted a SIP revision addressing, among other CAA requirements, the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2015 ozone NAAQS. Rhode Island asserted that its existing SIP contained adequate provisions to satisfy the requirements of CAA section 110(a)(2)(D)(i)(I).

Rhode Island relied on the results of EPA's modeling for the 2015 ozone NAAQS contained in the March 2018 memorandum to identify potential downwind nonattainment and maintenance receptors that may be impacted by emissions from sources in Rhode Island in the year 2023. These results indicate Rhode Island's greatest impact on any potential downwind nonattainment or maintenance receptor would be 0.04 ppb to a monitor in Queens, New York (monitoring site 360810124). Rhode Island compared this value to a screening threshold of 0.70 ppb, representing one percent of the 2015 ozone NAAQS. Because Rhode Island's impacts to potential receptors in downwind states are projected to be less than 0.70 ppb in 2023, Rhode Island concluded that air emissions from sources within the state will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

Rhode Island's September 2020 good neighbor SIP submission also notes that, in 2018 and 2019, the state adopted several air pollution control regulations based on EPA Control Techniques Guidelines, which represent Reasonably Available Control Technology (RACT) for several industry sectors.[17]

In addition, to reduce air pollution from mobile sources, Rhode Island states in its submittal that it has adopted California's vehicle emissions standards, implements an inspection and maintenance program for vehicle emissions-control systems and programs to enhance emissions control technology for diesel engines, and participates in regional and state efforts to build and incentivize zero-emission vehicle infrastructure and ownership. The state explains that these emissions reduction efforts ''will result in lower contributions of ozone precursors from sources or activities within Rhode Island to downwind areas, and lead to greater air quality benefits locally and regionally.'' [18]

III. EPA Evaluation of Rhode Island's Submission

Rhode Island's SIP submission relies on analysis of the year 2023 to show that Rhode Island does not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.[19] As explained in Section 1 of this proposal, the EPA has conducted an updated analysis for the 2021 analytical year that is being used to evaluate Rhode Island's transport SIP submission. While EPA has focused its analysis in this notice on the year 2021, modeling data in the record for years 2023 and 2028 confirm that no new linkages to downwind receptors are projected in later years. This is not surprising as it is consistent

[15] We note that the court in *Maryland* did not have occasion to evaluate circumstances in which EPA may determine that an upwind linkage to a downwind air quality problem exists at steps 1 and 2 of the interstate transport framework by a particular attainment date, but for reasons of impossibility or profound uncertainty the Agency is unable to mandate upwind pollution controls by that date. *See Wisconsin,* 938 F.3d at 320. The D.C. Circuit noted in *Wisconsin* that upon a sufficient showing, these circumstances may warrant flexibility in effectuating the purpose of the good neighbor provision. Such circumstances are not at issue in the present proposal.

[16] CAA section 181(a); 40 CFR 51.1303; Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 FR 25776 (June 4, 2018, effective Aug. 3, 2018).

[17] EPA notes that Rhode Island submitted these regulations to EPA for approval into the Rhode Island SIP on September 20, 2019. On September 3, 2020, EPA approved this submittal as meeting the state's RACT obligations for the 2008 and 2015 8-hour ozone NAAQSs as set forth in sections 182(b), 182(f) and 184(b)(2) of the CAA. See 85 FR 54926.

[18] Certification of Rhode Island State Implementation Plan (SIP) Adequacy Regarding Clean Air Act Sections 110(a) and (2) for the 2015 Ozone National Ambient Air Quality Standard (NAAQ) at 21.

[19] We recognize that Rhode Island and other states may have been influenced by EPA's 2018 guidance memos (issued prior to the *Wisconsin* and *Maryland* decisions) in making good neighbor submissions that relied on EPA's modeling of 2023. When there are intervening changes in relevant law or legal interpretation of CAA requirements, states are generally free to withdraw, supplement, and/or re-submit their SIP submissions with new analysis (in compliance with CAA procedures for SIP submissions). While Rhode Island has not done this, as explained in this section, the independent analysis EPA has conducted at its discretion confirms that the state's submission in this instance is ultimately approvable.

with an overall, long-term downward trend in emissions from the state.

As explained in Section I of this notice, in consideration of the holdings in *Wisconsin* and *Maryland,* EPA's analysis relies on 2021 as the relevant attainment year for evaluating Rhode Island's good neighbor obligations with respect to the 2015 ozone NAAQS using the four-step interstate transport framework. In step 1, we identify locations where the Agency expects there to be nonattainment or maintenance receptors for the 2015 8-hour ozone NAAQS in the 2021 analytic year. Where EPA's analysis shows that an area or site does not fall under the definition of a nonattainment or maintenance receptor in 2021, that site is excluded from further analysis under EPA's four-step interstate transport framework. For areas that are identified as a nonattainment or maintenance receptor, we proceed to the next step of our four-step framework by identifying the upwind state's contribution to those receptors.

EPA's approach to identifying ozone nonattainment and maintenance receptors in this action is consistent with the approach used in previous transport rulemakings. EPA's approach gives independent consideration to both the ''contribute significantly to nonattainment'' and the ''interfere with maintenance'' prongs of CAA section 110(a)(2)(D)(i)(I), consistent with the D.C. Circuit's direction in *North Carolina.*[20]

For the purpose of this proposal, EPA identifies nonattainment receptors as those monitoring sites that are projected to have average design values that exceed the NAAQS and that are also measuring nonattainment based on the most recent monitored design values. This approach is consistent with prior transport rulemakings, such as CSAPR Update, where EPA defined nonattainment receptors as those areas that both currently monitor nonattainment and that EPA projects will be in nonattainment in the future analytic year.[21]

In addition, in this proposal, EPA identifies a receptor to be a ''maintenance'' receptor for purposes of defining interference with maintenance, consistent with the method used in the CSAPR and upheld by the D.C. Circuit in *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 136 (D.C. Cir. 2015).[22] Specifically, monitoring sites with a projected maximum design value in 2021 that exceeds the NAAQS are considered maintenance receptors. EPA's method of defining these receptors takes into account both measured data and reasonable projections based on modeling analysis.

Recognizing that nonattainment receptors are also, by definition, maintenance receptors, EPA often uses the term ''maintenance-only'' to refer to receptors that are not currently nonattainment receptors. Consistent with the methodology described above, those sites that are currently measuring ozone concentrations below the level of the applicable NAAQS, but that are projected to be nonattainment based on the average or maximum design values, are also identified as maintenance-only receptors.

To evaluate future air quality in steps 1 and 2 of the interstate transport framework, EPA is using the 2016 and 2023 base case emissions developed under the EPA/MJO/state collaborative emissions modeling platform project as the primary source for base year and 2023 future year emissions data for this proposal.[23] Because this platform does not include emissions for 2021, EPA developed an interpolation technique based on modeling for 2023 and measured ozone data to determine ozone concentrations for 2021. To estimate average and maximum design values for 2021, EPA first performed air quality modeling for 2016 and 2023 to obtain design values in 2023. The 2023 design values were then coupled with the corresponding 2016 measured design values to estimate design values in 2021. Details on the modeling, including the interpolation methodology, can be found in the Air Quality Modeling TSD, found in the docket of this proposal.

To quantify the contribution of emissions from specific upwind states on 2021 8-hour design values for the identified downwind nonattainment and maintenance receptors, EPA first performed nationwide, state-level ozone source apportionment modeling for 2023. The source apportionment modeling provided contributions to ozone from precursor emissions of anthropogenic nitrogen oxides (NO_X) and volatile organic compounds (VOCs) in each state, individually. The modeled contributions were then applied in a relative sense to the 2021 average design value to estimate the contributions in 2021 from each state to each receptor. Details on the source apportionment modeling and the methods for determining contributions in 2021 are in the Air Quality Modeling TSD in the docket.

The 2021 design values and contributions were examined to determine if Rhode Island contributes at or above the threshold of one percent of the 2015 ozone NAAQS (0.70 ppb) to any downwind nonattainment or maintenance receptor. The data[24] indicate that the highest contribution in 2021 from Rhode Island to a downwind nonattainment or maintenance receptor is 0.09 ppb to a maintenance receptor in Fairfield County, Connecticut (monitoring site 90013007). The data also show modeled ozone contributions from Rhode Island to the design values of a larger set of monitoring sites (independent of attainment status) and indicate that the highest projected contribution in 2021 from Rhode Island to any of these sites is 2.50 ppb to Bristol County in Massachusetts (monitoring site 250051004; #242 on the Design Values and Contributions spreadsheet). While Rhode Island's modeled contribution to the Bristol County monitor exceeds one percent of the 2015 ozone NAAQS, EPA's analysis at step 1 does not identify the Bristol County monitor as a downwind area that may have problems maintaining the 2015 ozone NAAQS. The Bristol County monitor's projected average design value in 2021 is 65.7 ppb.

EPA also analyzed emissions trends for ozone precursors in Rhode Island to support the findings from the air quality analysis. In evaluating emissions trends, we first reviewed the information submitted by Rhode Island and then reviewed additional information available to the Agency. We focused on state-wide emissions of nitrogen oxides and volatile organic compounds.[25]

[20] 531 F.3d at 910–911 (holding that EPA must give ''independent significance'' to each prong of CAA section 110(a)(2)(D)(i)(I)).

[21] *See* 81 FR 74504 (October 26, 2016). Revised CSAPR Update also used this approach. *See* 86 FR 23054 (April 30, 2021). This same concept, relying on both current monitoring data and modeling to define nonattainment receptor, was also applied in CAIR. *See* 70 FR 25241 (January 14, 2005); *see also North Carolina,* 531 F.3d at 913–914 (affirming as reasonable EPA's approach to defining nonattainment in CAIR).

[22] *See* 76 FR 48208 (August 8, 2011). CSAPR Update and Revised CSAPR Update also used this approach. *See* 81 FR 74504 (October 26, 2016); 86 FR 23054 (April 30, 2021).

[23] *See* 86 FR 23054 (April 30, 2021). The results of this modeling are included in a spreadsheet in the docket for this action. The underlying modeling files are available for public access in the docket for the Revised CSAPR Update (EPA–HQ–OAR–2020–0272).

[24] The data are given in the ''Air Quality Modeling Technical Support Document for the Revised Cross-State Air Pollution Rule Update'' and ''Ozone Design Values and Contributions Revised CSAPR Update.xlsx,'' which are included in the docket for this action.

[25] This is because ground-level ozone is not emitted directly into the air but is formed by chemical reactions involving ozone precursors, chiefly NO_X and VOCs, in the presence of sunlight. *See* 86 FR 23054, 23063.

Emissions from mobile sources, electric generating units (''EGUs''), industrial facilities, gasoline vapors, and chemical solvents are some of the major anthropogenic sources of ozone precursors. This evaluation looks at both past emissions trends, as well as projected trends.

As shown in Table 1, for Rhode Island, between 2016 and 2023, annual total NO_X and VOC emissions are projected to decline by 33 percent and 5 percent, respectively. The projected reductions are a result of the implementation of existing control programs that will continue to decrease NO_X and VOC emissions in Rhode Island, as indicated by EPA's most recent 2021 and 2023 projected emissions.

As shown in Table 2, on-road and nonroad mobile source emissions collectively comprise a large portion of Rhode Island's total anthropogenic NO_X and VOC. For example, in 2019, NOx emissions from mobile sources in Rhode Island comprised 75 percent of total NO_X emissions and 35 percent of total VOC emissions.

The large decrease in NO_X emissions between 2016 emissions and projected 2023 emissions in Rhode Island is primarily driven by reductions in emissions from on-road and nonroad mobile sources. EPA projects that both VOC and NO_X emissions will continue declining out to 2023 as newer vehicles and engines that are subject to the most recent, stringent mobile source standards replace older vehicles and engines.[26]

In summary, based on the projected downward trend in projected future emissions trends, in combination with the historical decline in actual emissions, there is no evidence to suggest that the overall emissions trend demonstrated in Table 2 would suddenly reverse or spike in 2021 compared to historical emissions levels or those projected for 2023. Further, there is no evidence that the projected ozone precursor emissions trends beyond 2021 would not continue to show a decline in emissions. In addition, EPA's normal practice is to include in our modeling only changes in NO_X or VOC emissions that result from final regulatory actions. Any potential changes in NO_X or VOC emissions that may result from possible future or proposed regulatory actions are speculative.

This downward trend in emissions in Rhode Island adds support to the air quality analyses presented above and indicates that the contributions from emissions from sources in Rhode Island to ozone receptors in downwind states will continue to decline and remain below one percent of the NAAQS.

TABLE 1—ANNUAL EMISSIONS OF NO_X AND VOC FROM ANTHROPOGENIC SOURCES IN RHODE ISLAND

[Tons per year][27]

	2011	2012	2013	2014	2015	2016	2017	2018	2019	Projected 2021	Projected 2023
RI ..... NO_X	22,485	23,228	23,972	24,715	22,327	17,191	14,710	13,900	13,226	12,082	11,535
RI ..... VOC	23,167	23,275	23,382	23,490	21,896	19,086	17,893	17,489	17,086	18,260	18,089

TABLE 2—ANNUAL EMISSIONS OF NO_X AND VOC FROM ONROAD AND NONROAD VEHICLES IN RHODE ISLAND

[Tons per year]

	2011	2012	2013	2014	2015	2016	2017	2018	2019	Projected 2021	Projected 2023
RI ..... NO_X	15,164	16,679	18,195	19,711	17,625	12,792	10,614	10,000	9,386	7,745	6,919
RI ..... VOC	12,095	11,408	10,722	10,036	9,112	6,971	6,448	6,044	5,641	4,870	4,582

Thus, EPA's air quality and emissions analyses indicate that emissions from Rhode Island will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state in 2021.

IV. Proposed Action

As discussed in Section II, Rhode Island concluded that emissions from sources in their state will not contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. EPA conducted an independent analysis to determine whether the state's conclusions would remain valid for the analytic year 2021, based on more recent data and updated modeling. EPA's evaluation of measured and monitored data, including interpolating values to generate a reasonable expectation of air quality and contribution values in 2021, as discussed in Section III, is consistent with conclusions made by Rhode Island that emissions from sources in the state will not contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state in 2021. This conclusion remains true for later modeled years 2023 and 2028 in the updated modeling EPA is relying on. Because our analysis corroborates the state's conclusion that emissions from within its state do not contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in another state, we propose to approve the Rhode Island submission as meeting

[26] Tier 3 Motor Vehicle Emission and Fuel Standards, 79 FR 23414 (April 28, 2014); Mobile Source Air Toxics Rule (MSAT2), 72 FR 8428 (February 26, 2007); Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements, 66 FR 5002 (January 18, 2001); Clean Air Nonroad Diesel Rule, 69 FR 38957 (June 29, 2004); Locomotive and Marine Rule, 73 FR 25098 (May 6, 2008); Marine Spark-Ignition and Small Spark-Ignition Engine Rule, 73 FR 59034 (October 8, 2008); New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder Rule, 75 FR 22895 (April 30, 2010); Aircraft and Aircraft Engine Emissions Standards, 77 FR 36342 (June 18, 2012).

[27] The annual emissions data for the years 2011 through 2019 were obtained from EPA's National Emissions Inventory website: *https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data.* Note that emissions from miscellaneous sources are not included in the state totals. The emissions for 2021 and 2023 are based on the 2016 emissions modeling platform. *See* ''2005 thru 2019 + 2021_2023_2028 Annual State Tier 1 Emissions_v3'' and the Emissions Modeling TSD in the docket for this action.

the requirements of CAA section 110(a)(2)(D)(i)(I).

EPA is soliciting public comments on this notice. Significant comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

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, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide 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 EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 9, 2021.

Deborah Szaro,

Acting Regional Administrator, EPA Region 1.

[FR Doc. 2021–19836 Filed 9–14–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0290; FRL–8942–01–R3]

Air Plan Partial Disapproval; Commonwealth of Pennsylvania; Reasonably Available Control Technology Regulations for the 1997 and 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: As a result of the Third Circuit Court of Appeals' decision, dated August 27, 2020, in *Sierra Club* v. *U.S. EPA,* No. 19–2562 (3rd Cir. 2020), the Environmental Protection Agency (EPA) is proposing to partially disapprove a specific part of a state implementation plan (SIP) revision that had been previously approved by EPA. On May 19, 2019, EPA fully approved certain parts of a SIP revision submitted by the Commonwealth of Pennsylvania to address reasonably available control technology (RACT) for the 1997 and 2008 ozone national ambient air quality standards (NAAQS), and conditionally approved other parts of that submission. The court vacated EPA's approval of a portion of the SIP revision, as discussed below, and ordered that EPA either approve a new SIP revision addressing the court's decision or promulgate a federal implementation plan (FIP) within two years. EPA is therefore proposing to disapprove the portion of the SIP submission addressed by the court's decision. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before October 15, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2017–0290 at *https://www.regulations.gov,* or via email to *gordon.mike@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, 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. 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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For 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.*

FOR FURTHER INFORMATION CONTACT: Dave Talley, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2117. Mr. Talley can also be reached via electronic mail at *talley.david@epa.gov.*

SUPPLEMENTARY INFORMATION: On May 16, 2016, the Pennsylvania Department of Environmental Protection (PADEP) submitted a revision to its SIP for RACT Regulations for the 1997 and 2008 ozone NAAQS.

I. Background

On May 9, 2019, EPA published a final action fully approving certain

provisions of Pennsylvania's May 16, 2016 SIP revision submission to implement RACT for both the 1997 and 2008 Ozone NAAQS (hereafter the ''RACT II rule''), and conditionally approving other provisions of the SIP revision. 84 FR 20274 (May 9, 2019). Specifically, EPA's action fully approved ''25 Pa. Code sections 121.1, 129.96, 129.97, and 129.100 as meeting certain aspects of major stationary source RACT in CAA section 172, 182, and 184 for the 1997 and 2008 ozone NAAQS submitted May 16, 2016'' and conditionally approved ''25 Pa. Code sections 129.98 and 129.99 based on the commitment provided by Pennsylvania to submit additional SIP revisions to address the deficiencies identified by EPA in the May 16, 2016 SIP revision.'' *Id.* at 20290. The RACT requirements in CAA section 182(b)(2) apply to all ozone nonattainment areas classified as Moderate or higher (Serious, Severe, or Extreme). Section 184(b)(1)(B) of the CAA also applies RACT to all areas located within ozone transport regions established pursuant to section 184 of the CAA. The entire Commonwealth of Pennsylvania is part of the Ozone Transport Region (OTR) established under section 184 of the CAA and therefore subject statewide to the RACT requirements. The May 16, 2016 SIP submittal was intended to satisfy CAA sections 182(b)(2)(C), 182(f), and 184 for the 1997 and 2008 8-hour ozone NAAQS for all major sources of nitrogen oxides (NO_X) and volatile organic compounds (VOCs) in Pennsylvania not subject to control techniques guidelines (CTG), with a few exceptions not relevant to this action.

The Sierra Club commented on EPA's proposed approval of the RACT II rule, and following EPA's final approval, filed a petition for review with the U.S. Third Circuit Court of Appeals. The petition challenged EPA's approval of that portion of the RACT II rule applicable to coal-fired electricity generating units (EGUs) equipped with selective catalytic reduction (SCR) for control of NO_X, which is a precursor pollutant to ozone regulated under CAA section 182. Specifically, the petition challenged EPA's approval of the presumptive RACT NO_X limit for these EGUs of 0.12 pounds of NO_X per Million British Thermal Units (MMBtu) of heat input (lbs/MMBtu) when the inlet temperature to the SCR was 600 degrees Fahrenheit or above, found at 25 Pa. Code 129.97(g)(1)(viii); the application of the less stringent NO_X limits of 25 Pa Code 129.97(g)(1)(vi) to EGUs with SCR when the inlet temperature to the SCR was below 600 degrees Fahrenheit; [1] and the failure of the RACT II rule at 25 Pa. Code 129.100(d) to specifically require these EGUs to keep temperature data for the inlet temperature to the SCRs and report that data to PADEP.

On August 27, 2020, the Third Circuit found for the Sierra Club on all three of these issues, vacated the Agency's approval of the SIP submission on each of these three pieces of the Pennsylvania plan as it pertained to coal-fired EGUs equipped with SCRs, and remanded to the Agency. The court further stated that ''[o]n remand, the agency must either approve a revised, compliant SIP within two years or formulate a new federal implementation plan.'' *Sierra Club,* 972 F.3d 290, 309 (3d Cir. 2020).

II. Summary of SIP Provisions Being Proposed for Disapproval

The purpose of this action is to propose a partial disapproval for those portions of Pennsylvania's RACT II SIP for which the Third Circuit vacated EPA's approval. In light of the court's order regarding EPA actions on remand, EPA is proposing this action in part to ensure that we have authority to promulgate a FIP if Pennsylvania does not submit a timely or approvable SIP revision addressing the Third Circuit's decision.

The specific section of Pennsylvania's regulation in the SIP that is at issue here is 25 Pa. Code 129.97(g)(1)(viii), which sets a ''presumptive'' RACT limit for coal-fired combustion units equipped with SCR. The court held that EPA's approval of 25 Pa. Code 129.97(g)(1)(viii) was arbitrary and capricious because the record did not support EPA's finding that the emission limit of 0.12 lb NO_X/MMBtu of heat input was RACT for these EGU sources, particularly in light of submitted evidence that EGUs in Pennsylvania regulated by 25 Pa. Code 129.97(g)(1)(viii) had achieved much lower emission rates for NO_X in the past, and that other states had adopted lower RACT NO_X limits for coal-fired sources. *Sierra Club* at 299–303. In addition, the court held that EPA's approval of the 600 degree Fahrenheit temperature ''exemption'' to the 0.12 lb/MMBtu limit for NO_X in 25 Pa Code 129.97(g)(1)(viii) was arbitrary and capricious because the record failed to support the need for the 600 degree exemption or explain why 600 degrees was chosen as the threshold for the exemption. *Id.* at 303–307. Thus, the court vacated EPA's approval of these two provisions, both of which are only found in 25 Pa. Code 129.97(g)(1)(viii). See *Id.* at 309.

Regarding the reporting and record keeping requirement of 25 Pa. Code 129.100(d), the court also found EPA's approval of the specific SIP revisions discussed above to be arbitrary and capricious based upon the lack of a specific record keeping and reporting requirement for the 600 degree inlet temperature exemption to the SCR. See *Id.* Specifically, the court held that ''[b]ecause the SIP's 600-degree threshold necessarily depends upon accurate temperature reporting, the EPA's approval of such inadequate requirements on this record was arbitrary and capricious.'' *Id.* at 309. Lacking evidence in the record that this language would require sources subject to 25 Pa. Code 129.97(g)(1)(viii) to keep specific SCR temperature inlet data, report that data to PADEP, and make it available to the public, the court agreed with the Sierra Club that in this scenario the terms are too vague to be enforceable. *Id.* at 308. Further, the court explained that ''[t]he combination of this lack of mandatory reporting and the temperature waiver created a potent loophole for polluters to walk through.'' *Id.* at 297. For these reasons, EPA now finds that the previously approved recordkeeping and reporting provisions are inadequate in this specific context, which further supports this proposed partial disapproval.

EPA has been and will continue to work with PADEP to address revised RACT determinations during the state's development of the SIP revision in response to the court decision.

III. Proposed Action

Consistent with the Third Circuit's decision, and based on the reasoning contained therein, EPA is proposing under CAA section 110(k)(3) to revise its full approval of certain provisions of the Pennsylvania RACT II rule that were vacated and remanded to EPA by the Third Circuit Court of Appeals. EPA's proposed partial disapproval of this previously-approved SIP revision is limited to the regulatory provision related to presumptive RACT requirements for coal-fired combustion units at EGUs equipped with SCR, specifically 25 Pa. Code 129.97(g)(1)(viii). Because we are now proposing to disapprove 25 Pa. Code 129.97(g)(1)(viii), and the 600 degree temperature threshold along with the 0.12 lbs/MMBtu limit is contained entirely within this section, no additional federal regulatory revisions are necessary to address the court's holding that EPA's approval of the

[1] 25 Pa Code 129.97(g)(1)(vi) applies to coal-fired combustion units with a heat input greater than 250 million MMBtu/hr that do not have SCR.

record-keeping requirement was arbitrary and capricious.

Section 110(c)(1) of the CAA requires the Administrator to promulgate a FIP at any time within two years after the Administrator finds that a state has failed to make a required SIP submission, finds a SIP submission to be incomplete, or disapproves a SIP submission, unless the state corrects the deficiency, and the Administrator approves the SIP revision, before the Administrator promulgates a FIP. Therefore, if EPA finalizes this proposed partial disapproval, EPA will be obligated under CAA section 110(c)(1) to promulgate a FIP within two years after the effective date of the partial disapproval, unless the State submits and the EPA approves SIP revisions to correct the identified deficiencies in the RACT II rule before EPA promulgates the FIP. Notwithstanding this timeframe established under CAA section 110(c)(1) for EPA's promulgation of a FIP, the Third Circuit has ordered the EPA to issue a FIP within two years of the date of its decision in *Sierra Club,* 972 F.3d 290, 309 (3rd Cir., August 27, 2020), if the Agency has not approved a SIP correcting the identified deficiencies in the RACT II rule within this timeframe. In addition, final partial disapproval would trigger mandatory sanctions under CAA section 179 and 40 CFR 52.31 unless the State submits, and EPA approves, SIP revisions that correct the identified deficiencies in the RACT II rule within 18 months of the effective date of the final partial disapproval action.

EPA is soliciting public comments on our proposed partial disapproval as explained herein. We will accept comments from the public on this proposal for the next 30 days.

IV. Statutory and Executive Order Reviews

Executive Orders 12866 and 13563: Regulatory Planning and Review

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget.

Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

Paperwork Reduction Act

This rulemaking does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This action merely proposes to disapprove state requirements as not meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rulemaking proposes to disapprove pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to disapprove a state requirement and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

In addition, 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 rulemaking 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).

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rulemaking also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it proposes to disapprove a state rule.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211 (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA lacks the discretionary authority to address environmental justice in this action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the CAA.

Accordingly, this action proposing partial disapproval of Pennsylvania's RACT regulations for the 1997 and 2008 ozone NAAQS, merely disapproves certain state requirements for inclusion into the SIP under section 110 of the CAA and will not in-and-of itself create any new requirements. Accordingly, it 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 8, 2021.

Diana Esher,

Acting Regional Administrator, Region III.

[FR Doc. 2021–19818 Filed 9–14–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R10–OAR–2020–0305; FRL–8878–01–R10]

Air Plan Approval; ID; West Silver Valley Redesignation to Attainment for the 2012 Annual $PM_{2.5}$ Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to redesignate the West Silver Valley, Idaho nonattainment area to attainment for the 2012 annual fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). EPA is also proposing to approve a maintenance plan for the area demonstrating continued compliance with the NAAQS through 2031, which the Idaho Department of Environmental Quality (IDEQ) submitted along with the redesignation request on June 2, 2020, for inclusion into the Idaho State Implementation Plan (SIP). Additionally, EPA is proposing to approve the 2031 motor vehicle emissions budgets included in Idaho's maintenance plan for $PM_{2.5}$, nitrogen oxides (NO_X) and volatile organic compounds (VOCs). EPA is proposing this action pursuant to the Clean Air Act (CAA or the Act).

DATES: Comments must be received on or before October 15, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2020–0305, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which 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. 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.*

FOR FURTHER INFORMATION CONTACT: Claudia Vaupel, (206) 553–6121, *vauepl.claudia@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to EPA.

Table of Contents

I. Background

On December 14, 2012, EPA promulgated a revised primary annual $PM_{2.5}$ NAAQS to provide increased protection of public health from fine particle pollution. 78 FR 3086 (January 15, 2013). In that action, EPA strengthened the primary annual $PM_{2.5}$ standard from 15.0 micrograms per cubic meter (mg/m^3) to 12.0 mg/m^3, which is attained when the 3-year average of the annual arithmetic means does not exceed 12.0 mg/m^3. On December 18, 2014, EPA promulgated initial designations for the 2012 primary $PM_{2.5}$ NAAQS based on 2011–2013 air quality monitoring data for the majority of the United States. 80 FR 2206 (January 15, 2015). In that action, EPA designated the West Silver Valley in Shoshone County, Idaho as a moderate nonattainment area for the 2012 annual $PM_{2.5}$ NAAQS. *See* 40 CFR 81.313.

On April 6, 2018, EPA published a ''finding of failure to submit'' required SIP elements for the 2012 annual $PM_{2.5}$ NAAQS for several nonattainment areas nationwide, including the West Silver Valley in Idaho. *See* 83 FR 14759. In particular, Idaho failed to submit the following specific moderate area SIP elements for the West Silver Valley: An attainment demonstration; control strategies, including reasonably available control measures (RACM) and reasonably available control technologies (RACT); a reasonable further progress (RFP) plan; quantitative milestones; and contingency measures. This finding triggered the sanctions clock under section 179 of the CAA, as well as an obligation under section 110(c) of the CAA for EPA to promulgate a Federal Implementation Plan no later than 2 years from the effective date of the finding, if Idaho has not submitted, and EPA has not approved, the required SIP submission.

On December 21, 2018, EPA determined that the West Silver Valley attained the 2012 annual $PM_{2.5}$ NAAQS based on 2015–2017 ambient air quality monitoring data and made a ''clean data determination.'' 83 FR 65535. A clean data determination suspends certain planning requirements for the area, including the requirement to submit an attainment demonstration and associated RACM, including RACT, an RFP plan, and contingency measures for failure to attain or meet RFP. These requirements are suspended as long as the area continues to meet the 2012 annual $PM_{2.5}$ NAAQS. When the area is redesignated to attainment, the requirements are permanently discharged.

II. Requirements for Redesignation to Attainment

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA, 42 U.S.C. 7407(d)(3)(E), allows for redesignation provided that: (1) EPA determines that the area has attained the applicable NAAQS; (2) EPA has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions

in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the state containing such area has met all requirements applicable to the area under section 110 and part D of the CAA. In this proposed action, EPA will review CAA section 107(d)(3)(E) requirements (2) and (5) together as part of our evaluation of Idaho's redesignation request.

EPA has provided guidance on redesignation in the CAA ''General Preamble,'' [1] and has provided further guidance on processing redesignation requests in the following documents: (1) ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (Calcagni memorandum); (2) ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and (3) ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994. These documents are included in the docket for this proposed action.

III. EPA's Analysis of Idaho's Submittal

EPA is proposing to redesignate the West Silver Valley to attainment for the 2012 annual $PM_{2.5}$ NAAQS and to approve Idaho's related maintenance plan. EPA's proposed approval of the redesignation request and maintenance plan is based upon EPA's determination that the area continues to attain the 2012 annual $PM_{2.5}$ NAAQS and that all other redesignation criteria have been met for the area. The following is a description of how Idaho's June 2, 2020, submission satisfies the requirements of section 107(d)(3)(E) of the CAA for the 2012 annual $PM_{2.5}$ standard.

A. Attainment Determination

To redesignate an area from nonattainment to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). An area is attaining the 2012 annual $PM_{2.5}$ NAAQS if it meets the standard, as determined in accordance with 40 CFR 50.13 and appendix N of 40 CFR part 50. To attain the 2012 annual $PM_{2.5}$ NAAQS, the 3-year average of the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, appendix N, must be less than or equal to 12.0 mg/m^3 at all relevant monitoring sites in the subject area over a 3-year period. The relevant data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS) database.

There is one $PM_{2.5}$ ambient air quality monitor in the West Silver Valley, located in Pinehurst, Idaho (AQS ID 160790017). As noted, EPA first determined that the West Silver Valley attained the 2012 annual $PM_{2.5}$ NAAQS based on 2015–2017 ambient air quality monitoring data at this monitor on December 21, 2018. 83 FR 65535.

EPA has reviewed the certified, quality-controlled and quality-assured $PM_{2.5}$ Pinehurst monitoring data for the 2018–2020 design value period and determined that the design value is 10.9 mg/m^3, which is less than or equal to 12.0 mg/m^3, and therefore the area continues to meet the 2012 annual $PM_{2.5}$ NAAQS. On this basis, EPA is proposing to determine that the West Silver Valley is attaining the 2012 annual $PM_{2.5}$ NAAQS. The monitoring data is summarized in Tables 1 and 2 is also available in the docket for this action available online at *https://www.regulations.gov,* Docket ID: EPA–R10–OAR–2020–0305.

TABLE 1—2015 TO 2020 $PM_{2.5}$ ANNUAL MEANS IN THE WEST SILVER VALLEY IN IDAHO

Area/county	Monitor AQS ID	Annual means in $\mu g/m^3$					
		2015	2016	2017*	2018	2019	2020
Pinehurst/Shoshone	160790017	13.6	9.3	12.3	12.8	9.63	11.1

* EPA excluded five 24-hr $PM_{2.5}$ values during September 2017 because those NAAQS exceedances were caused by a wildfire exceptional event. (See 83 FR 65535, December 21, 2018).

TABLE 2—2015 TO 2020 $PM_{2.5}$ ANNUAL DESIGN VALUES IN THE WEST SILVER VALLEY IN IDAHO

Area/county	Monitor AQS ID	Annual design values in $\mu g/m^3$			
		2015–2017*	2016–2018*	2017–2019*	2018–2020
Pinehurst/Shoshone	160790017	11.7	11.2	11.3	10.9

* EPA excluded five 24-hr $PM_{2.5}$ values during September 2017 because those NAAQS exceedances were caused by a wildfire exceptional event. (See 83 FR 65535, December 21, 2018).

B. Applicable Requirements Under Section 110 and Part D of the CAA

In accordance with section 107(d)(3)(E)(v) of the CAA, Idaho must meet all the requirements applicable to the West Silver Valley under section 110 of the CAA (general SIP requirements) and part D of title I of the CAA (SIP requirements for nonattainment areas). Under section 107(d)(3)(E)(ii) of the CAA, Idaho's SIP revisions for the 2012 annual $PM_{2.5}$ NAAQS for the West Silver Valley must be fully approved under section 110(k) of the CAA. Section 110(k) of the CAA sets out the requirements for EPA's actions on SIP revision submittals.

The September 4, 1992 Calcagni memorandum describes EPA's interpretation of section 107(d)(3)(E) with respect to the timing of applicable requirements. Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the

[1] *See* ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498, April 16, 1992.

submittal of a complete redesignation request. *See also* Shapiro memorandum, September 17, 1993,[2] and 60 FR 12459, 12465–12466, (March 7, 1995) (redesignation of Detroit-Ann Arbor). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved but are not required as a prerequisite to redesignation. See CAA section 175A(c). *Sierra Club* v. *EPA,* 375 F .3d 537 (7th Cir. 2004). See also 68 FR 25418, 25424 and 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

In the case of the West Silver Valley, the base year emissions inventory was due prior to Idaho's submittal of the complete redesignation request for the area. Therefore, the base year inventory is an applicable requirement. The attainment plan, including RACM/RACT, and contingency measures for failure to attain or meet RFP, were also due prior to Idaho's submittal of complete redesignation requests for the West Silver Valley. However, as described in detail later in this notice of proposed rulemaking (NPRM), the clean data determination suspended these requirements for as long as the West Silver Valley continues to meet the 2012 annual $PM_{2.5}$ NAAQS. When the area is redesignated to attainment, these requirements are permanently discharged.

1. CAA Section 110 General SIP Requirements

Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) of the CAA include, but are not limited to the following: (1) Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; (2) provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; (3) implementation of a minor source permit program; (4) provisions for the implementation of part C requirements (referred to as prevention of significant deterioration or PSD); (5) provisions for the implementation of part D requirements for nonattainment new source review (referred to as part D NNSR, NNSR, nonattainment NSR, or NSR) permit programs; (6) provisions for air pollution modeling; and (7) provisions for public and local agency participation in planning and emission control rule development.

CAA section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. However, CAA section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that these requirements are applicable requirements for purposes of redesignation.

In addition, EPA believes that the other CAA section 110(a)(2) elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation because the area will still be subject to these requirements after it is redesignated. EPA concludes that the CAA section 110(a)(2) and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request, and that CAA section 110(a)(2) elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. This approach is consistent with EPA's existing policy on applicability of conformity (*i.e.,* for redesignations) and oxygenated fuels requirement. *See* Reading, Pennsylvania, proposed rulemaking and final rule (61 FR 53174, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio final rule (61 FR 20458, May 7, 1996); and Tampa, Florida, final rule (60 FR 62748, December 7, 1995). *See also,* the discussion on this issue in the Cincinnati, Ohio redesignation (65 FR at 37890, June 19, 2000), and in the Pittsburgh-Beaver Valley, Pennsylvania redesignation (66 FR at 53099, October 19, 2001).

EPA has reviewed the Idaho SIP and has concluded that it meets the general SIP requirements under section 110(a)(2) of the CAA to the extent they are applicable for the purposes of redesignation. EPA has previously approved provisions of Idaho's SIP as demonstrating compliance with the CAA section 110(a)(2) requirements for the 2012 annual $PM_{2.5}$ NAAQS (82 FR 57132, December 4, 2017 and 83 FR 48240, September 24, 2018). However, as noted above, the requirements of section 110(a)(2) are statewide requirements that are not linked to the $PM_{2.5}$ nonattainment status of the West Silver Valley area. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of this proposed redesignation.

Because PSD requirements will apply after redesignation, areas being redesignated must have an approved PSD program. Once the West Silver Valley is redesignated to attainment, Idaho's PSD program, and not NNSR, will become effective in the area. Idaho's PSD regulations are codified in the Idaho Administrative Procedures Act (IDAPA) at 58.01.01.200–228. We most recently approved revisions to Idaho's PSD program on August 20, 2018 (83 FR 42033), May 12, 2017 (82 FR 22083) and August 12, 2016 (81 FR 53290).

Areas seeking redesignation need not comply with the requirement that a NNSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without NNSR. A more detailed rationale for this is described in the Nichols memorandum. Nevertheless, on August 20, 2018, EPA approved Idaho's SIP as meeting applicable NNSR requirements. (83 FR 42033). EPA has reviewed the Idaho SIP and has concluded that it meets the general SIP requirements under section 110(a)(2) of the CAA to the extent they are applicable for purposes of redesignation, namely a SIP-approved PSD program.

2. Part D of Title I Requirements

Part D of Title I of the CAA sets forth the basic nonattainment plan requirements applicable to all nonattainment areas at subpart 1 (CAA sections 172–176) and requirements specific to PM_{10} and $PM_{2.5}$ areas at subpart 4 (CAA section 189). On August 24, 2016, EPA promulgated the Fine Particulate Matter National Ambient Air Quality Standards; State Implementation Plan Requirements

[2] ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator, Air and Radiation, September 17,1993.

rule.[3] This rule implements the requirements of part D of title I of the CAA for areas designated nonattainment for any $PM_{2.5}$ NAAQS.

EPA's longstanding interpretation of the nonattainment planning requirements of CAA section 172 is that once an area is attaining the NAAQS, those requirements are not ''applicable'' for purposes of CAA section 107(d)(3)(E)(ii) and therefore need not be approved into the SIP before EPA can redesignate the area. In the 1992 General Preamble for Implementation of CAA title I, EPA set forth its interpretation of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard. See 57 FR 13498, 13564 (April 16, 1992). EPA noted that the requirements for RFP and other measures designed to provide for attainment do not apply in evaluating redesignation requests because those nonattainment planning requirements ''have no meaning'' for an area that has already attained the standard. *Id.* This interpretation was also set forth in the Calcagni memorandum. EPA's understanding of CAA section 172 also forms the basis of its Clean Data Policy, which was articulated with regard to $PM_{2.5}$ in 40 CFR 51.1015 and suspends a state's obligation to submit most of the attainment planning requirements that would otherwise apply, including an attainment demonstration and planning SIPs to provide for RFP, RACM, and contingency measures under section 172(c)(9).[4] Courts have upheld EPA's interpretation of CAA section 172(c)(1)'s ''reasonably available'' control measures and control technology as meaning only those controls that advance attainment, which precludes the need to require additional measures where an area is already attaining. *NRDC* v. *EPA,* 571 F.3d 1245, 1252 (D.C. Cir. 2009); *Sierra Club* v. *EPA,* 294 F.3d 155, 162 (D.C. Cir. 2002); *Sierra Club* v. *EPA,* 314 F.3d 735, 744 (5th Cir. 2002).

As stated previously, EPA determined that the West Silver Valley has attained the 2012 annual $PM_{2.5}$ NAAQS in a ''clean data determination.'' 83 FR 65535, December 21, 2018. Furthermore, as shown in section III.A of this document, the West Silver Valley continues to attain the 2012 annual $PM_{2.5}$ NAAQS. Therefore, because attainment has been reached in the West Silver Valley, no additional measures are needed to provide for attainment, and CAA section 172(c)(1) requirements for an attainment demonstration and RACM are no longer considered to be applicable for purposes of redesignation as long as the West Silver Valley continues to attain the standard until redesignation.

The CAA section 172(c)(2) requirement that nonattainment plans contain provisions promoting reasonable further progress toward attainment is also not relevant for purposes of redesignation because EPA has determined that the West Silver Valley has monitored attainment of the 2012 annual $PM_{2.5}$ NAAQS. In addition, because the West Silver Valley has attained the 2012 annual $PM_{2.5}$ NAAQS and is no longer subject to RFP requirements, the requirement to submit the section 172(c)(9) contingency measures is not applicable for purposes of redesignation. CAA section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the NAAQS. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(3) of the CAA requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. The requirement under CAA section 172(c)(3) was not suspended by EPA's clean data determination for the 2012 annual $PM_{2.5}$ NAAQS and is the only remaining requirement under CAA section 172 to be considered for purposes of redesignation of the West Silver Valley. On September 29, 2017, Idaho submitted to EPA a 2013 base year emissions inventory for the West Silver Valley for the 2012 annual $PM_{2.5}$ NAAQS. The 2013 base year inventory covers the general source categories of point sources, nonroad mobile sources, area sources, and onroad mobile sources and includes $PM_{2.5}$ emissions and precursors, NO_X, sulfur dioxide (SO_2), VOCs, and ammonia (NH_3). EPA approved the 2013 base year inventory on September 11, 2018 (83 FR 45830).

CAA section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. As stated previously in this document, EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NNSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without NNSR. A more detailed rationale for this view is described in the Nichols memorandum. Nevertheless, EPA first approved the requirements of the part D NSR permit program for Idaho under subpart 1 on November 26, 2010 (75 FR 72719). Subsequently, on March 20, 2018, Idaho submitted rule revisions to meet additional part D NSR requirements promulgated by EPA under subpart 4 (81 FR 58010, August 24, 2016). We approved Idaho's submission on August 20, 2018 (83 FR 42033).

Once the West Silver Valley is redesignated to attainment, Idaho's PSD program, and not NNSR, will become effective in the area. Idaho's PSD regulations are codified in the Idaho Administrative Procedures Act (IDAPA) at 58.01.01.200–228 (permit to construct) and governed by IDAPA 58.01.01.205 (permit requirements for new major facilities or major modifications in attainment or unclassifiable areas). We most recently approved revisions to Idaho's PSD program on August 20, 2018 (83 FR 42033), May 12, 2017 (82 FR 22083) and August 12, 2016 (81 FR 53290). EPA finds that Idaho's PSD provisions meet all applicable Federal requirements for any area designated unclassifiable or attainment.

CAA section 172(c)(7) requires the SIP to meet the applicable provisions of CAA section 110(a)(2). As noted above, we find that the Idaho SIP meets the CAA section 110(a)(2) applicable requirements for purposes of redesignation.

Section 175A of the CAA requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area ''for at least 10 years after the redesignation.'' In conjunction with its requests to redesignate the West Silver Valley to attainment, Idaho submitted a plan to provide for maintenance of the 2012 annual $PM_{2.5}$ NAAQS in the West Silver Valley for at least 10 years after redesignation, through 2031. Idaho is requesting that EPA approve the submission as meeting the requirement of section 175A of the CAA. Once approved, the maintenance plan will ensure that the Idaho SIP meets the requirements of the CAA regarding maintenance of the 2012 annual $PM_{2.5}$ NAAQS for the West Silver Valley. EPA's analysis of the maintenance plan is provided in section III.D of this document.

EPA concludes that Idaho has met the requirements of subpart 1 of part D relevant for redesignation. Specifically,

[3] 81 FR 58010, August 24, 2016. Codified at 40 CFR part 51, subpart Z.

[4] This regulation was promulgated as part of the 1997 $PM_{2.5}$ NAAQS implementation rule that was subsequently challenged and remanded in *NRDC* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013), as discussed in section III.B of this document. However, the Clean Data Policy portion of the implementation rule was not at issue in that case.

pursuant to section 110(k) of the CAA, EPA has approved Idaho's 2013 base year inventory for the West Silver Valley into the Idaho SIP.

C. Improvement in Air Quality Due to Permanent and Enforceable Measures

CAA section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, implementation of applicable Federal air pollutant control regulations, and other permanent and enforceable reductions.

In making this demonstration for the West Silver Valley, Idaho explained that control measures for the area focused on residential wood combustion, onroad, and nonroad sources, which contributed to $PM_{2.5}$ formation in the 2013 base year emissions inventory (2013 was one of the years used to designate the area as nonattainment). The 2017 attainment year emissions inventory recorded reductions in directly emitted $PM_{2.5}$ and precursors for those categories (2017 is one of the years used to monitor attainment). Idaho states that the emissions reductions occurred because of permanent and enforceable federal reduction programs, public outreach, and financial incentives.

Residential Wood Heating

Idaho's residential wood combustion control measures for the West Silver Valley addressed smoke from heating devices, such as fireplaces and wood stoves. In comparing emissions between the 2013 base year inventory and the 2017 attainment year inventory for the West Silver Valley, Idaho showed a 63 percent decrease in $PM_{2.5}$ emissions from residential wood combustion, from 55.38 tons per year (tpy) in the 2013 base year emissions inventory to 20.45 tpy in the 2017 attainment year emissions inventory. Idaho attributed these emission reductions primarily to Federal standards for wood heaters and to the West Silver Valley woodstove changeout program.

Idaho explained that EPA's 2015 Standards of Performance for New Residential Wood Heaters strengthened emissions limits for residential wood heaters, making devices significantly cleaner.[5] The 2015 rule requires, among other things, that new residential wood heaters be certified to meet the 2015 emission limits before they may be imported, sold, or distributed in the U.S. To accelerate the removal of uncertified wood stoves, Idaho incentivized wood stove replacements in the West Silver Valley through a wood stove changeout program. Participants in the changeout program replaced uncertified wood stoves with EPA-certified devices or gas appliances, and were required to surrender their uncertified wood stoves, making the emissions reductions permanent. Between 2013 and 2017, Idaho replaced 65 wood stoves in the West Silver Valley. Although Idaho's future year emissions projections assume residential wood combustion to be constant for years beyond 2017, Idaho anticipates additional emissions reductions as phase II of the Standards of Performance for New Residential Wood Heaters is implemented and as remaining funding for an additional 140 wood stove replacements in the West Silver Valley is distributed.

Mobile Sources

Idaho states that despite increasing vehicle populations and vehicle miles traveled, emissions from mobile sources in the West Silver Valley have decreased as a result of Federal motor vehicle regulations. In comparing the 2013 base year emissions inventory with the 2017 attainment year emissions, EPA found that onroad emissions decreased by 2.55 tpy and nonroad emissions decreased by 3.65 tpy.[6]

Idaho primarily attributes the reduction in onroad emissions to the Federal Tier 2 (65 FR 6698, February 10, 2000) and Tier 3 (79 FR 23414, April 28, 2014) vehicle emissions standards and gasoline sulfur control requirements, and to the Federal rule for heavy-duty engine and vehicle standards and highway diesel fuel sulfur control requirements (66 FR 5002, January 18, 2001). Idaho explained that the vehicle standards reduce tailpipe and evaporative emissions, reductions which increase as vehicle turnover increases over time, and that the gasoline sulfur standards make emissions control systems more effective for both existing and new vehicles.

Idaho identified several Federal rules that have been promulgated to address nonroad mobile emissions sources. On June 29, 2004, EPA adopted a comprehensive national program to reduce emissions from nonroad diesel engines (69 FR 38958). The rule phased in tighter emissions limits for large nonroad diesel engines and requirements for reducing the sulfur content of nonroad diesel fuel.

Statewide SIP-Approved Rules

Idaho has several SIP-approved rules that apply statewide and complement the Federal control strategies in the West Silver Valley. For example, the following rules assist in the control of $PM_{2.5}$ in the West Silver Valley: The rules for the control of open burning at IDAPA 58.01.01.600 through 624; the requirements to reasonably control fugitive dust at sections 650 through 652; the permitting of industrial sources (sections 200, 300 and 400), and the specific requirements for nonmetallic mineral processing plants at sections 795 through 799. Additionally, sections 550 through 562 provide authority to limit emissions during degraded air quality episodes.

Idaho also assessed the potential role that changing meteorological conditions might have played in improving air quality in the West Silver Valley. Idaho reviewed temperature and precipitation data as well as the frequency of wintertime stagnation events. Idaho concluded that it is unlikely that favorable meteorological conditions played a significant role in attaining the 2012 annual $PM_{2.5}$ NAAQS.

Based on the evaluation of these control measures, EPA proposes to determine that the improvement in air quality is reasonably attributable to permanent and enforceable reductions in emissions resulting from implementation of the applicable Federal air pollutant control regulations, and other permanent and enforceable emissions reductions.

D. Fully Approved Maintenance Plan

In conjunction with Idaho's request to redesignate the West Silver Valley to attainment, Idaho submitted SIP revisions to provide for maintenance of the 2012 annual $PM_{2.5}$ NAAQS through 2031. EPA is proposing to approve Idaho's maintenance plan for the West Silver Valley. If this proposed action is finalized, the West Silver Valley will have an approved maintenance plan.

CAA section 107(d)(3)(E)(iv) requires that, for a nonattainment area to be redesignated to attainment, EPA must fully approve a maintenance plan which meets the requirements of CAA section 175A. The plan must demonstrate continued attainment of the relevant NAAQS in the area for at least 10 years after our approval of the redesignation. Eight years after our approval of a redesignation, the State must submit a

[5] EPA promulgated standards for residential wood heaters on February 26, 1988 (53 FR 5860). On March 16, 2015, EPA revised the rule (80 FR 13672). EPA recently revised the rule on April 2, 2020 (85 FR 18448).

[6] The 2013 base year EI onroad emissions were 17.30 tpy and nonroad emissions were 14.7 tpy (*see* 83 FR 21976, May 11, 2018).

revised maintenance plan demonstrating attainment for the 10 years following the initial 10-year period. The maintenance plan must also contain a contingency plan to ensure prompt correction of any violation of the NAAQS. The Calcagni Memo provides additional guidance on the content of a maintenance plan, stating that a maintenance plan should include the following elements: (1) An attainment emissions inventory; (2) a maintenance demonstration showing attainment for 10 years following redesignation; (3) a commitment to maintain the existing monitoring network; (4) verification of continued attainment; and (5) a contingency plan to prevent or correct future violations of the NAAQS. The following paragraphs describe how each of these elements is addressed in Idaho's maintenance plan.

1. Attainment Inventory

As discussed in the CAA General Preamble (*see* 57 FR 13498, April 16, 1992) and the Calcagni Memo, $PM_{2.5}$ maintenance plans should include an attainment emission inventory to identify the level of emissions in the area which is sufficient to maintain the NAAQS. The attainment inventory should be consistent with EPA's most recent guidance on emission inventories for nonattainment areas available at the time and should include the emissions during the time period associated with the monitoring data showing attainment.

Idaho submitted a maintenance plan for the West Silver Valley that includes an attainment year inventory for the area for 2017, which is one of the years in the period during which the West Silver Valley first monitored attainment of the 2012 annual $PM_{2.5}$ NAAQS (see section III.A of this document). The attainment year inventory includes emissions of $PM_{2.5}$, NO_X, SO_2, VOC, and NH_3. The 2017 attainment levels of emissions are summarized in Table 3, along with future year projected emissions for 2026 and 2031.

TABLE 3—WEST SILVER VALLEY MAINTENANCE PLAN EMISSIONS INVENTORIES

[In tons per year]

Source category	2017 attainment	2026 interim	2031 maintenance	Difference from 2026 and 2017	Difference from 2031 and 2017
$PM_{2.5}$ (condensable and filterable)					
Point	0.642	0.742	0.742	0.10	0.10
Area	259.710	259.070	258.720	−0.64	−0.99
Onroad	14.700	8.760	9.250	−5.94	−5.45
Nonroad	3.590	1.780	1.590	−1.81	−2.00
Total	278.642	270.352	270.302	−8.29	−8.34
NO_X					
Point	1.610	6.430	9.200	4.82	7.59
Area	51.130	51.500	51.700	0.37	0.57
Onroad	484.160	324.140	338.400	−160.02	−145.76
Nonroad	62.080	29.910	27.260	−32.17	−34.82
Total	598.980	411.980	426.560	−187.00	−172.42
SO_2					
Point	0.080	0.110	0.130	0.03	0.05
Area	16.170	16.350	16.450	0.18	0.28
Onroad	0.700	0.760	0.900	0.06	0.20
Nonroad	0.100	0.080	0.090	−0.02	−0.01
Total	17.050	17.300	17.570	0.25	0.52
VOC					
Point	5.710	13.820	13.980	8.11	8.27
Area	3,307.970	3,350.320	3,373.840	42.35	65.87
Onroad	134.200	83.670	73.450	−50.53	−60.75
Nonroad	32.050	28.080	28.200	−3.97	−3.85
Total	3,479.930	3,475.890	3,489.470	−4.04	9.54
NH_3					
Point	0.020	0.160	0.250	0.14	0.23
Area	35.200	35.090	35.030	−0.11	−0.17
Onroad	4.430	4.490	5.300	0.06	0.87
Nonroad	0.110	0.110	0.110	0.00	0.00
Total	39.760	39.850	40.690	0.09	0.93

Based our review of the emissions inventories Idaho provided in its submission, we propose to find that Idaho prepared an adequate attainment inventory for the West Silver Valley area.[7]

2. Maintenance Demonstration

CAA section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the area ''for at least 10 years after the redesignation.'' A state can make this demonstration by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emissions rates will not cause a violation of the NAAQS.[8] In its maintenance plan, Idaho demonstrates maintenance by showing that emissions projected over the maintenance period will not exceed emissions levels that were present when the area came into attainment of the 2012 annual $PM_{2.5}$ NAAQS. In its maintenance demonstration for the West Silver Valley, Idaho projected emissions forward to 2026 and 2031, which satisfies the 10-year interval required in section 175A of the CAA. As discussed previously, Idaho selected 2017 as the attainment emissions inventory year for the West Silver Valley. The attainment inventory identifies the level of emissions that is sufficient to attain the 2012 annual $PM_{2.5}$ NAAQS. Idaho has previously submitted a 2013 base year inventory, which EPA approved into the Idaho SIP on September 11, 2018 (83 FR 45830).

The emissions inventories in the West Silver Valley maintenance plan address four major source categories: Point, area, onroad mobile and nonroad mobile. Idaho estimated future year emissions inventories using the latest socioeconomic growth indicators and applying emissions reduction benefits from adopted control strategies when appropriate.

Idaho identified five minor point sources in the West Silver Valley and projected emissions to future years by using either their potential to emit as a conservative estimate of growth, the average annual growth of population, or assumed little or no expected growth based on data evidence or conversations with facility owners. Area sources in the West Silver Valley emissions inventory include residential wood combustion, solvent use, agricultural production, fuel transport, combustion (residential, commercial, and industrial), unpaved road dust, industrial processes, outdoor burning, prescribed fire, and waste disposal, treatment and recovery processes. Idaho estimated future year emissions based on the average annual growth rate of the appropriate activity sector in the previous 5 years through to the final year of the maintenance plan, 2031. Idaho developed the mobile source inventory for Shoshone County using the latest version of EPA's Motor Vehicle Emissions Simulator (MOVES) model at the time,[9] MOVES2014b, and apportioned it to the West Silver Valley nonattainment area. Idaho used local inputs and applied growth rates to the 2017 vehicle miles travelled and vehicle populations to develop inputs for the 2026 and 2031 projections. Idaho calculated paved road dust emissions according to AP–42 guidance for Shoshone County and apportioned the emissions estimates to the West Silver Valley area. To estimate nonroad mobile source emissions, Idaho used the nonroad component of the MOVES model and used the model defaults, except for meteorological data.

EPA has reviewed the documentation provided by Idaho for developing the 2026 and 2031 emissions inventories for the West Silver Valley and finds that Idaho prepared them in accordance with EPA requirements. These inventories indicate a decrease in emissions of $PM_{2.5}$ (38.34 tpy or 3%) and NO_X (172.42 tpy or 28.79%) throughout the maintenance period, between 2017 and 2031. Although there are slight increases in emissions of SO_2 (0.52 tpy or 3.05%), VOC (9.54 tpy or 0.28%) and NH_3 (0.93 tpy or 2.34%) between 2017 and 2031, which Idaho attributes to population growth, Idaho demonstrated that this increase will not prevent maintenance of the NAAQS through 2031.

3. Monitoring Network

In the maintenance plan, Idaho committed to continue to operate the air monitoring network in accordance with 40 CFR part 58. Idaho stated that it will work with EPA each year through the air monitoring network review process to determine the adequacy of the monitoring network, if additional monitoring is needed, and if or when the site can be discontinued or relocated.[10] EPA proposes to determine that the maintenance plan contains adequate provisions for continued operation of an air quality monitoring network to verify maintenance of the 2012 annual $PM_{2.5}$ NAAQS.

4. Verification of Continued Attainment

Idaho remains obligated to continue to quality-assure monitoring data and enter all data into AQS in accordance with Federal guidelines. Idaho will use air monitoring results to verify continued attainment of the 2012 annual $PM_{2.5}$ NAAQS and to track progress of the maintenance plan. Idaho is also required to periodically update the emissions inventory for Shoshone County in accordance with the Annual Air Emissions Reporting Requirements Rule (AERR). This includes developing annual inventories for major point sources and a comprehensive periodic inventory covering all source categories every 3 years.

5. Contingency Plan

CAA section 175A(d) requires that a maintenance plan also include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area to attainment. For the purposes of CAA section 175A, a state is not required to have fully adopted contingency measures that will take effect without further action by the state in order for the maintenance plan to be approved. However, the contingency plan is an enforceable part of the SIP and should ensure that contingency measures are adopted promptly once they are triggered. The maintenance plan should discuss the measures to be adopted and a schedule and procedure for adoption and implementation. The contingency plan must require that the state will implement all measures contained in the Part D nonattainment plan for the area prior to redesignation. The state should also identify the specific indicators, or triggers, which will be used to determine when the contingency plan will be implemented.

The West Silver Valley maintenance plan identifies actions Idaho will promptly take to prevent or correct a violation of the 2012 annual $PM_{2.5}$

[7] ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' May 2017.

[8] *See* Calcagni Memo, pages 9–10.

[9] MOVES 2014b was the latest model version when Idaho submitted the West Silver Valley redesignation request and maintenance plan to EPA on June 2, 2020. Since that time, EPA published model version MOVES3 on January 7, 2021, making it the latest version of the MOVES model as of this publication. 86 FR 1106. As explained in the notice of availability for MOVES3, state and local agencies should use the latest version of MOVES that is available at the time that a SIP is developed. However, state and local agencies that have already completed significant work on a SIP with a version of MOVES2014 may continue to rely on the earlier version of MOVES. Because Idaho submitted the SIP to EPA before MOVES3 was released, it was appropriate for Idaho to have used MOVES2014b.

[10] See EPA's November 9, 2020 approval of Idaho's 2020 Annual Monitoring Network Plan, included in the docket for this action.

NAAQS. If the annual average $PM_{2.5}$ concentration reaches 12.5 ug/m^3 or greater in a single calendar year, Idaho will evaluate all appropriate data to determine the cause of the elevated levels and whether the elevated $PM_{2.5}$ levels are likely to continue. Idaho will evaluate all appropriate data including air quality data, meteorology, evaluation of wood smoke programs and information on wildfires or winter power outages to determine the cause of the exceedance within 6 months of the year in which the annual average reaches 12.5 ug/m^3 or greater. If the evaluation indicates that additional control measures are necessary, Idaho will implement appropriate contingency measures as expeditiously as possible, no later than 18 months from the determination of a single year exceedance based on quality-assured data. If Idaho determines that an exceptional event contributes to a violation of the 2012 annual $PM_{2.5}$ standard, it will follow EPA's exceptional events rule.[11]

Idaho has identified the following potential contingency measures for the West Silver Valley maintenance plan:

- Increase efforts to control mud and dirt track out from industrial, construction, and agricultural operations onto paved roads.
- Adopt local ordinance addressing nonresidential slash burning to require burn permits year-round.
- Adopt local ordinances that reduce the residential open burning days.
- Adopt a local ordinance that prohibits installing uncertified wood stoves in residential and commercial buildings.
- Expand educational efforts to reduce $PM_{2.5}$ from wood smoke.
- Pursue funds to continue offering wood stove changeouts and fireplace conversions within the West Silver Valley nonattainment area.

Based on our analysis of Idaho's submittal, we propose to find that the contingency measure provisions provided in the West Silver Valley maintenance plan are sufficient and meet the requirements of CAA section 175A(d).

E. Requirements for Transportation Conformity and Motor Vehicle Emissions Budgets (MVEBs)

Transportation conformity is required by CAA section 176(c). EPA's transportation conformity rule at 40 CFR part 93, subpart A, requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they conform to the SIP. Conforming to a SIP means that onroad transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. Thus, EPA's transportation conformity rule requires a demonstration that emissions from a metropolitan planning organization's regional transportation plan and transportation improvement program, involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval, are consistent with the motor vehicle emissions budgets (MVEBs) contained in a control strategy SIP revision or maintenance plan (40 CFR 93.101, 93.118, and 93.124). The MVEB is the level of mobile source emissions of a pollutant relied upon in the attainment or maintenance demonstration to attain or maintain compliance with the NAAQS in the nonattainment or maintenance area. A $PM_{2.5}$ maintenance plan should identify MVEBs for direct $PM_{2.5}$, NO_X and all other $PM_{2.5}$ precursors from onroad mobile source emissions that are determined to significantly contribute to $PM_{2.5}$ levels in the area.[12]

Idaho indicated that the West Silver Valley nonattainment area meets the definition of an ''isolated rural nonattainment area'' at 40 CFR 93.109(g) because the area does not contain, and is not part of, a metropolitan planning organization. Neither a transportation improvement plan nor a regional transportation plan was developed for the West Silver Valley. Instead, transportation projects for the West Silver Valley are included in a statewide transportation improvement plan. The Idaho Transportation Department is responsible for transportation conformity determinations in this isolated rural nonattainment area.

The maintenance plan submitted by Idaho for the West Silver Valley identifies MVEBs for $PM_{2.5}$, NO_X and VOCs, which are displayed in Table 4. To determine which precursor pollutants were required to be included in the MVEB, Idaho reviewed $PM_{2.5}$ speciation at the Pinehurst monitor (AQS ID 160790017). Idaho did not include emissions from paved road dust because those emissions were found to be insignificant. Idaho also found that vehicle emissions of SO_2 and NH_3 contributed minimally to $PM_{2.5}$ in the area and did not include MVEBs for these precursors in accordance with 40 CFR 93.102(b)(2)(v).

TABLE 4—2017 AND 2031 MVEBS FOR THE WEST SILVER VALLEY

Year	Motor vehicle emissions budget (tpy)		
	$PM_{2.5}$	NO_X	VOC
2017	10.84	484.16	134.20
2031	3.76	338.14	73.45

EPA is proposing to find that Idaho has evaluated the appropriate pollutants and precursors and appropriately established MVEBs for $PM_{2.5}$, NO_X and VOCs. Idaho used the most up-to-date model (MOVES2014b) available at the time of submission in order to appropriately calculate these budgets. The MVEBs are based on the control measures in the maintenance plan and consistent with maintaining the 2012 annual $PM_{2.5}$ NAAQS.

IV. Proposed Action

EPA is proposing to redesignate the West Silver Valley 2012 annual $PM_{2.5}$ nonattainment area, and to approve the associated maintenance plan for the area. If this proposal is finalized, the designation status of the West Silver Valley under 40 CFR part 81 will be revised to attainment upon the effective date of the final action.

V. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section

[11] Treatment of Data Influenced by Exceptional Events, October 3, 2016, 81 FR 68216.

[12] See 40 CFR 93.102(b)(2)(iv) and (v), and (b)(3).

107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those already imposed by state law. For that reason, this action:

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

In addition, this proposed action does not 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, this rulemaking does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: September 8, 2021.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. 2021–19801 Filed 9–14–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 405

[CMS–3372–P2]

RIN 0938–AT88

Medicare Program; Medicare Coverage of Innovative Technology (MCIT) and Definition of ''Reasonable and Necessary''

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Proposed rule.

SUMMARY: This proposed rule would repeal the Medicare Coverage of Innovative Technology (MCIT) and Definition of ''Reasonable and Necessary'' final rule, which was published on January 14, 2021, and would be effective on December 15, 2021. We are providing a public comment period to allow interested parties to provide comments about the proposed repeal, our intent to conduct future rulemaking to explore an expedited coverage pathway that provides access to innovative beneficial technologies and the reasonable and necessary definition.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, by October 15, 2021.

ADDRESSES: In commenting, please refer to file code CMS–3372–P2. Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3372–P2, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3372–P2, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Lori Ashby, (410)–786–6322 or *MCIT@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. CMS continues to encourage

individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

I. Background

A. January 14, 2021 Final Rule

In the January 14, 2021 **Federal Register**, we published a final rule titled ''Medicare Program; Medicare Coverage of Innovative Technology (MCIT) and Definition of 'Reasonable and Necessary' (86 FR 2987) (hereinafter referred to as the ''MCIT/R&N final rule''). The MCIT/R&N final rule established a Medicare coverage pathway to provide Medicare beneficiaries nationwide with faster access to recently market authorized medical devices designated as breakthrough by the Food and Drug Administration (FDA). Under the final rule, MCIT would result in 4 years of national Medicare coverage starting on the date of FDA market authorization or a manufacturer chosen date within 2 years thereafter. The MCIT/R&N final rule would also implement regulatory standards to be used in making reasonable and necessary determinations under section 1862(a)(1)(A) of the Social Security Act (the Act) for items and services that are furnished under Medicare Parts A and B.

B. March 2021 Interim Final Rule (IFC) and May 2021 Final Rule To Delay Effective Date

In response to the January 20, 2021 memorandum from the Assistant to the President and Chief of Staff titled ''Regulatory Freeze Pending Review'' (''Regulatory Freeze Memorandum'') (86 FR 7424, January 28, 2021) and guidance on implementation of the memorandum issued by the Office of Management and Budget (OMB) in Memorandum M–21–14 dated January 20, 2021, we determined that a 60-day delay of the effective date of the MCIT/R&N final rule was appropriate to ensure that—

- The rulemaking process was procedurally adequate;
- We properly considered all relevant facts;
- We considered statutory or other legal obligations;
- We had reasonable judgment about the legally relevant policy considerations; and
- We adequately considered public comments objecting to certain elements of the rule, including whether interested parties had fair opportunities to present contrary facts and arguments.

Therefore, in an interim final rule with comment period that went on display at the **Federal Register** and took effect on March 12, 2021 (hereinafter referred to as the ''March 2021 IFC''), and was published in the March 17, 2021 **Federal Register** (86 FR 14542), we—(1) delayed the MCIT/R&N final rule effective date until May 15, 2021 (that is, 60 days after the original effective date of March 15, 2021); and (2) opened a 30-day public comment period on the facts, law, and policy underlying the MCIT/R&N final rule.

Many commenters on the March 2021 IFC supported further delaying the MCIT/R&N final rule. Based upon the public comments, we did not believe that it was in the best interest of Medicare beneficiaries for the MCIT/R&N final rule to become effective on May 15, 2021. Therefore, in a final rule that went on display at the **Federal Register** and took effect on May 14, 2021 (hereinafter referred to as the ''May 2021 final rule''), and was published in the May 18, 2021 **Federal Register** (86 FR 26849), we summarized the comments on the March 2021 IFC and further delayed the MCIT/R&N final rule effective date until December 15, 2021. We explained that the additional delay would provide us an opportunity to address all of the issues raised by stakeholders, especially those related to Medicare patient protections and evidence criteria. We announced that during the delay, we would determine appropriate next steps that are in the best interest of all Medicare stakeholders, and beneficiaries in particular.

II. Provisions of Proposed Regulations

We propose to repeal the MCIT/R&N final rule. Our rationale for our proposal as well as our requests for comments on this proposed rule are explained in the following section.

A. Proposed Repeal of Medicare Coverage of Innovative Technology Policy

CMS developed MCIT in part due to concerns that delays and uncertainty in Medicare coverage slowed innovation and impaired beneficiary access to important new technologies, specifically those designated as breakthrough devices by FDA. In response to these concerns, the rule provided 4 years of expedited coverage to FDA market authorized Breakthrough Devices on the first day of FDA market authorization or a select date up to 2 years after the market authorization date as requested by the device manufacturer. While the final rule did not require manufacturers to develop additional scientific evidence supporting the use of the Breakthrough Devices in the Medicare population, manufacturers were aware that, upon conclusion of MCIT coverage, the existing coverage pathways would be available (that is, reasonable and necessary determinations would be made via claim-by-claim adjudication, local coverage determinations (LCDs), and national coverage determinations (NCDs), which include the coverage with evidence development pathway). The NCD and LCD development processes include reviews of publicly available clinical evidence to determine whether or not the items or services are reasonable and necessary and would be covered by Medicare.

We believe that the finalized MCIT/R&N rule is not in the best interest of Medicare beneficiaries because the rule may provide coverage without adequate evidence that the Breakthrough Device would be a reasonable and necessary treatment for the Medicare patients that have the particular disease or condition that the device is intended to treat or diagnose. While the rule tried to address stakeholder concerns about accelerating coverage of new devices, significant concerns persist about the availability of clinical evidence on Breakthrough Devices when used in the Medicare population as well as the benefit or risks of these devices with respect to use in the Medicare population upon receipt of coverage. Based on the comments received throughout the development of the MCIT pathway, we do not believe that the final rule as currently drafted, is the best way to achieve the goals of MCIT as outlined in the MCIT/R&N final rule, in particular, to more precisely meet the needs Medicare beneficiaries and other stakeholders in a timely fashion. We believe that there are other ways to achieve our stated goals. This may include better utilizing existing pathways or conducting future rulemaking.

As noted in the May 2021 final rule, our prior policies permitted the Medicare program to deny coverage for particular devices if we learned that a particular device may be harmful to Medicare beneficiaries. Specifically, Medicare Administrative Contractors (MACs) could have denied claims under certain circumstances (86 FR 26851, May 18, 2021). Under the MCIT/R&N final rule, this case-specific flexibility would have been removed. While we could remove coverage through the NCD process, we would only be able to expeditiously remove a Breakthrough Device from the MCIT coverage pathway for limited reasons, such as if FDA issued a safety communication or warning letter regarding the

Breakthrough Device, or removed the marketing authorization for a device. We believe that this limitation on our authority is impracticable as it may lead to preventable harm to Medicare beneficiaries and it impedes Medicare's ability to make case-by-case determinations regarding whether a device is reasonable and necessary based on clinical evidence.

Further, while the finalized MCIT policy in the MCIT/R&N final rule would have provided expedited Medicare coverage following market authorization for breakthrough designated devices, there is currently no FDA requirement that Medicare beneficiaries must be included in clinical studies needed for market-authorization. Because the MCIT/R&N final rule did not require data concerning Medicare beneficiaries, there is the potential that Medicare would cover devices, even in the absence of data demonstrating that the device is reasonable and necessary for Medicare patients will benefit from the device. Additionally, several medical device manufacturers suggested that, for inclusion in MCIT, FDA pivotal studies should require inclusion of sufficient numbers of Medicare beneficiaries (86 FR 26851, May 18, 2021).

Certain proponents of accelerated Medicare coverage have argued that FDA's determination that a product meets applicable safety and effectiveness standards for marketing authorization should be sufficient to support Medicare coverage of Breakthrough Devices. However, after further consideration of all public comments, we no longer agree that the FDA safety and effectiveness standards alone are sufficient to support open-ended Medicare coverage. FDA and CMS act under different statutes that have different goals and the standard for coverage (that is, a determination that a device is reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member) is not synonymous with standards for safety and efficacy standards for marketing authorization for the broader population. Among other things, FDA conducts premarket review of certain devices to evaluate their safety and effectiveness and determines if they meet the applicable standard to be marketed in the United States. In doing so, FDA relies on scientific and medical evidence that does not necessarily include patients from the Medicare population. In general, under the Medicare statute, CMS is charged with determining whether items and services are reasonable and necessary to diagnose or treat an illness or injury or to improve the functioning of a malformed body member. One consideration for CMS in making national coverage determinations under the reasonable and necessary statute is whether the item/service improves health outcomes for Medicare beneficiaries. It is important to determine whether Medicare beneficiaries' health outcomes are improved because these individuals are often older, with multiple comorbidities,[1] and are often underrepresented or not represented in many clinical studies.

1. Evidence Development and Patient Safety

The Medicare national coverage determination process includes a robust review of available clinical evidence and focuses on the Medicare population to make reasonable and necessary determinations. In contrast, the MCIT pathway would establish an expedited 4-year coverage pathway for all Breakthrough Devices that fall under a Medicare benefit category without a specific requirement that the device must demonstrate it is reasonable and necessary for the Medicare population. In general, Medicare patients have more comorbidities and often require additional and higher acuity clinical treatments which may impact the outcomes differently than the patients generally enrolled in early clinical trials. These considerations are often not addressed in the early device development process.

When we issued the MCIT/R&N final rule on January 14, 2021, we responded to commenters who suggested that CMS should take a different approach. Some commenters suggested that we should require manufacturers to provide data about Medicare outcomes before providing coverage as reasonable and necessary. Other commenters suggested that we provide incentives to manufacturers to include Medicare beneficiaries in clinical studies, similar to CMS's Coverage with Evidence Development (CED) paradigm, before coverage under section 1862(a)(1)(A) of the Act was allowed (86 FR 2990, January 14, 2021).[2] In response to the March 2021 IFC, additional commenters supported evidence development as part of the requirements to participate in the MCIT pathway. Some commenters noted that some clinical trials that were conducted to support market authorization through the Breakthrough Devices pathway lack data on patients older than 65, patients with disabilities, and patients with end stage renal disease (ESRD). They asserted that the absence of this clinical information poses some uncertainty about whether FDA's determination of safety and efficacy could be generalized to the Medicare population (86 FR 26850 and 26851, May 18, 2021). CMS acknowledges that after further consideration of public comments, we have changed our position on this issue. In response to commenters' concerns about expedited coverage without adequate evidentiary support, CMS agrees that guaranteeing coverage for all Breakthrough Devices receiving market authorization for any Medicare patient could be problematic if there is no evidence demonstrating a health benefit or addressing the additional risks for Medicare beneficiaries (86 FR 26850 and 26851, May 18, 2021). We noted that a Breakthrough Device may only be beneficial in a subset of the Medicare population or when used only by clinicians within a certain specialty to ensure benefit. Without additional clinical evidence on the device's clinical utility for the Medicare population or appropriate providers, it is challenging to determine appropriate Medicare coverage of newly market-authorized Breakthrough Devices (86 FR 26850 and 26851, May 18, 2021).

We recognize that the breakthrough designation may be granted by FDA before sufficient clinical evidence is available to prove there is a health benefit for Medicare patients. FDA has explained in guidance that because decisions on requests for breakthrough designation will be made prior to marketing authorization, FDA considers whether there is a ''reasonable expectation that a device could provide for more effective treatment or diagnosis relative to the current standard of care (SOC) in the U.S'' for purposes of the designation. This reasonable expectation can be ''supported by literature or preliminary data (bench, animal, or clinical)''.[3] Without sufficient

[1] Davide L Vetrano, MD, Katie Palmer, Ph.D., Alessandra Marengoni, MD, Ph.D., Emanuele Marzetti, MD, Ph.D., Fabrizia Lattanzio, MD, Ph.D., Regina Roller-Wirnsberger, MD, MME, Luz Lopez Samaniego, Ph.D., Leocadio Rodríguez-Mañas, MD, Ph.D., Roberto Bernabei, MD, Graziano Onder, MD, Ph.D., Frailty and Multimorbidity: A Systematic Review and Meta-analysis, *The Journals of Gerontology: Series A,* Volume 74, Issue 5, May 2019, Pages 659–666, *https://doi.org/10.1093/gerona/gly110.*

[2] CMS, Guidance for the Public, Industry, and CMS Staff Coverage with Evidence Development, available at *https://www.cms.gov/medicare-coverage-database/details/medicare-coverage-document-details.aspx?MCDId=27.*

[3] Food and Drug Administration, Breakthrough Devices Program Guidance for Industry and Food

evidence developed to show the device improves health outcomes for Medicare beneficiaries, it may be challenging for the Medicare program to determine the health benefit of these devices for Medicare beneficiaries. Public comments expressed concern about how the Medicare population is often excluded from clinical trials due to age and health status.

Previously, in the MCIT/R&N final rule, we noted that ''device coverage under the MCIT pathway is reasonable and necessary for a duration of time under section 1862(a)(1)(A) of the Act because the device has met the very unique criteria of the FDA Breakthrough Devices Program'' (86 FR 2988, January 14, 2021).[4] Through further consideration of the breakthrough designation process, we have changed our position on this issue and determined that Breakthrough Device designation is not, by itself, sufficient for expedited Medicare coverage purposes. Rather, as explained previously, we understand that FDA may grant a device breakthrough designation when the device has shown a ''reasonable expectation'' of providing more effective treatment or diagnosis of a life-threatening or irreversibly debilitating disease or condition relative to the current U.S. SOC and that it meets the other criterion for designation in section 515B(b)(2) of the Federal Food, Drug, and Cosmetic Act (FD&C) Act (21 U.S.C. 360e–3(b)(2)). In turn, we now do not believe it is in the best interest of Medicare beneficiaries to base expedited, multiyear, broad national coverage through section 1862(a)(1)(A) of the Act on this designation alone.

Clinical studies that are conducted in order to gain market authorization for FDA Breakthrough Devices may not always include information on patients with similar demographics and characteristics of the Medicare population. Additionally, there may be devices designated as breakthrough that do not have adequate data on the effectiveness of the device for the Medicare population. Without requiring any evidence specific to the Medicare patients, there may not be any evidence to demonstrate whether the device is beneficial or not after the conclusion of MCIT coverage after 4 years. Without such evidence, it is possible that Medicare would be covering and paying for devices that may have little or no Medicare relevant clinical evidence to assist physicians and patients in making potentially life-saving treatment decisions. Evidence-based coverage policy is essential to our objective of improving health outcomes while delivering greater value. Supportive clinical evidence that ensures a device is both safe and effective and reasonable and necessary in the Medicare population is crucial in order to grant coverage for a device under section 1862(a)(1)(A) of the Act. Such evidence is used to determine whether a new technology meets the appropriateness criteria of the longstanding Medicare Program Integrity Manual Chapter 13 definition of reasonable and necessary.[5] We believe that it is important to require manufacturers participating in an innovative coverage pathway, such as MCIT, to produce evidence that demonstrates the health benefit of the device and the related services for patients with demographics similar to that of the Medicare population.

In response to the March 2021 IFC, some commenters cited evidence that FDA-mandated postmarket studies are not reliably completed (less than 20 percent of required studies are completed within 3 to 5 years after market authorization),[6] and asserted that evidence demonstrating a device's health benefit in Medicare beneficiaries is essential. Commenters also recommended that CMS outline in guidance documents the types of evidence that would be acceptable for applications for national or local coverage determinations once the MCIT pathway's 4 years had expired, such as real-world data or randomized, controlled trials (86 FR 26851, May 18, 2021). By voluntarily developing this evidence during the time a device is covered under the MCIT pathway, the manufacturer could have the evidence base needed for one of the other coverage pathways after the MCIT pathway ends. However, the MCIT/R&N final rule did not require manufacturers of Breakthrough Devices to develop evidence as part of their participation requirements under MCIT. In the May 2021 final rule, we noted that numerous commenters, including physicians with experience in clinical research and medical specialty societies, sought modifications to the MCIT/R&N final rule regarding evidence development, including the addition of real-world evidence requirements.

As was noted by commenters in response to the March 2021 IFC that delayed the MCIT/R&N final rule until December 15, 2021, early and unrestricted adoption of devices may have consequences that may not be easy to reverse. CMS expects physicians to consider the available evidence and assess the care needs of each patient when considering the best treatment options. However, by guaranteeing coverage of devices based solely on breakthrough status and FDA marketing authorization, rather than also taking into account whether the device provides an effective, reasonable and necessary treatment for Medicare patients, there may be an incentive for physicians to use a device that has coverage under the MCIT pathway rather than a device that is not covered under the MCIT pathway but is nonetheless covered under an existing coverage pathway and that may be more beneficial to patients. This early adoption by physicians could potentially lead to these devices being prematurely viewed as the standard of care, which could adversely impact beneficiaries if there is another item or service available to treat the patient that has an evidence-base to suggest that it may lead to better health outcomes. We believe that providers' clinical treatment decisions should take the individual needs of the patient into account; therefore, we seek to avoid the appearance of incentivizing the use of MCIT-covered devices when an alternative item or service may be more appropriate.

While the MCIT/R&N final rule may provide beneficiaries and manufacturers an assurance of national Medicare coverage, evidence development under MCIT as previously finalized is voluntary and there was no requirement that manufacturers conduct studies to generate evidence to demonstrate clinical benefit to Medicare patients. We acknowledge that we no longer believe that voluntary evidence development is in the best interests of Medicare beneficiaries as we believe such evidence is key to determining the best treatments for Medicare patients to ensure that the benefits of treatments outweigh the potential harms. For devices that lack evidence that is generalizable to the Medicare population, we believe it is important for evidence to be developed and some public commenters suggested that we establish the coverage criteria (for example, provider experience, site of service, availability of supporting services) to ensure delivery of high-quality, evidence-based care.

and Drug Administration Staff, 9, available at: *https://www.fda.gov/media/108135/download.*

[4] 86 FR 2988 (January 14, 2021) *available at https://www.govinfo.gov/content/pkg/FR-2021-01-14/pdf/2021-00707.pdf.*

[5] CMS, Medicare Program Integrity Manual, Chapter 13, 13.5.4, *available at https://www.cms.gov/regulations-and-guidance/guidance/manuals/downloads/pim83c13.pdf.*

[6] Rathi et al.

While we are proposing to repeal the MCIT/R&N final rule, this action would not prohibit coverage of Breakthrough Devices. As we noted in the May 2021 final rule, even without the MCIT/R&N final rule in effect, a review of claims data showed that Breakthrough Devices have received and are receiving Medicare coverage when medically necessary. Many of the eligible Breakthrough Devices are coverable and payable through existing mechanisms. Some Breakthrough Devices may be addressed by an existing LCD or NCD. New items and services can also be adjudicated on a claim-by-claim basis and be covered and paid under the applicable Medicare payment system if the MAC determines them to be reasonable and necessary for specific patients upon a more individualized MAC assessment. The MACs take into account a beneficiary's particular clinical circumstances to determine whether a beneficiary may benefit from the device. CMS acknowledges, among other factors, that MCIT was developed in response to stakeholder concerns about time lags and coverage uncertainty for devices subject to claim-by-claim coverage determinations.

2. Limitations of the MCIT Pathway

The MCIT/R&N final rule limited MCIT only to Breakthrough Devices that are designated as part of FDA's Breakthrough Devices Program. In accordance with section 515B of the FD&C (21 U.S.C. 360e–3), FDA's Breakthrough Devices Program is for certain medical devices and device-led combination products, and can include lab tests.[7] To be granted a Breakthrough Device designation under the Breakthrough Devices Program, medical devices and device-led combination products must meet two criteria. The first criterion is that the device provides for more effective treatment or diagnosis of life-threatening or irreversibly debilitating human disease or conditions. The second criterion is that the device must satisfy one of the following elements:

- It represents a breakthrough technology.
- No approved or cleared alternatives exist.
- It offers significant advantages over existing approved or cleared alternatives.
- Device availability is in the best interest of patients (for more information see 21 U.S.C. 360e–3(b)(2)).

[7] Breakthrough Devices Program Guidance for Industry and Food and Drug Administration Staff, available at *https://www.fda.gov/media/108135/download.*

We acknowledge that some stakeholders, and device manufacturers in particular, supported MCIT and the concept of faster coverage.

Some commenters to the September 2020 MCIT/R&N proposed rule expressed concern that the MCIT pathway could give specific technologies an unfair advantage that would be unavailable to subsequent market entrants, thereby decreasing innovation and market competition (86 FR 2998). Commenters submitted a variety of alternative approaches to covering second-to-market and non-breakthrough designated new technology to remedy this unintended consequence. Some commenters supported that CMS cover iterative refinements of the same Breakthrough Device for the duration of the original device's MCIT term. Other commenters suggested coverage under the MCIT pathway for subsequent similar breakthrough and non-breakthrough designated devices of the same type and indication for the balance of the first device's MCIT term. Yet other commenters proposed that new market entrants that are very similar to a Breakthrough Device should each receive the full 4 years of MCIT coverage, not tied to the timeline of the original product. Commenters also suggested policies related to coverage options for second-to-market or subsequent technologies of the same type, even for the same indication or subsequent-to-market non-breakthrough designated technologies that fall under the same class or category as the predicate breakthrough technology and approved for the same indication.

CMS acknowledges that we have changed our policy position on this issue after further consideration of public comments. We agree with commenters that there are many drawbacks to limiting coverage through the MCIT pathway only to those devices that are part of the Breakthrough Devices Program. As noted previously, the potential incentives created by offering immediate coverage of Breakthrough Devices may disincentivize development of innovative technologies that do not meet the criteria for the Breakthrough Devices Program, such as some non-breakthrough-designated second-to-market devices and subsequent technologies of the same type. Additionally, we now believe a more flexible coverage pathway that leverages existing statutory authorities may be better able to provide faster coverage of new technologies to Medicare beneficiaries while prioritizing patient health and outcomes. CMS invites public comment on our proposal to repeal the MCIT coverage pathway of the MCIT/R&N final rule for the reasons previously described.

3. Future Coverage Policy Rulemaking

While we are proposing to repeal the MCIT/R&N final rule as it is currently written, we are considering future policies and potential rulemaking to provide improved access to innovative and beneficial technologies. We are committed to exploring other policy options and statutory authorities for coverage that better suit the needs of Medicare beneficiaries and other stakeholders when the items or services are supported by adequate evidence.

B. Definition of ''Reasonable and Necessary''

In general, section 1862(a)(1)(A) of the Act permits Medicare payment under Part A or Part B for items or services that are reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member. The definition of ''reasonable and necessary'' in the MCIT/R&N final rule mirrored the longstanding CMS Program Integrity Manual's definition of ''reasonable and necessary'' with a modification to the appropriateness factor to specify when and how (upon publication of guidance) we would utilize commercial insurer coverage policies.

Expanding the reasonable and necessary definition to systematically consider commercial insurer coverage presents implementation and appeals process challenges that would likely persist. In the preamble to the MCIT/R&N final rule, we stated our intention to gather additional public input on the methodology by which commercial insurers' policies are determined to be relevant to the reasonable and necessary appropriateness criteria in response to commenters concerns that the commercial insurer appropriateness criteria was vague. We stated that not later than 12 months after the effective date of the MCIT/R&N final rule (that is, December 15, 2021), we would publish for public comment, a draft methodology for determining when commercial insurers' policies could be considered to meet the reasonable and necessary definition appropriateness criteria for coverage of an item or service. Comments received in response to the March 2021 IFC expressed concern about how the commercial insurer policy provision would be implemented. Commenters also expressed concerns that the R&N definition included in the MCIT/R&N

final rule, and more specifically the commercial insurance aspects of the definition, will remove existing flexibilities and potentially impact CMS' ability to ensure equitable health care access for all Medicare beneficiaries. Additionally, commenters suggested that the reasonable and necessary definition should be included in a separate rule as MCIT because R&N are independent and distinct provisions with different implications for Medicare policy. In light of our proposal to repeal the R&N definition, including the commercial insurance aspects of the MCIT/R&N final rule, we will not be issuing subregulatory guidance by March 15, 2022 on consideration of commercial insurer coverage polices when there is insufficient evidence to make a national or local coverage determination.

While we are proposing to fully repeal the MCIT/R&N final rule as it is currently written, we invite comments on the R&N aspect of our proposal. In lieu of fully repealing the R&N rule, should the final rule instead merely repeal the commercial insurance aspects of the rule? If CMS does consider future rulemaking to include defining reasonable and necessary, what criteria should CMS consider as part of the reasonable and necessary definition? For example, should CMS maintain the codification of the definition of ''Reasonable and Necessary'' as found in the Chapter 13 of the CMS Program Integrity Manual (PIM) or consider different criteria?

C. Effect of Proposed Repeal

If the MCIT/R&N final rule is repealed as proposed, the revisions to part 405 of Title 42 of the Code of Federal Regulations would not occur and the text would remain unchanged. Specifically, a definition of ''reasonable and necessary'' would not be included among the terms defined at 42 CFR 405.201(b) and the guidance that the rule would have required (subregulatory guidance on the topic of utilization of commercial insurer polies) would not be introduced. Additionally, Subpart F, which wholly consisted of Medicare Coverage of Innovative Technology, would not be added, and Subpart F would remain reserved for other purposes.

III. Regulatory Impact Statement

This proposed rule would repeal the MCIT pathway and codification of the definition of ''reasonable and necessary.'' Because the January 2021 final rule effective date was delayed until December 15, 2021, the MCIT coverage pathway and definition of ''reasonable and necessary'' have not been implemented, and no payments for items and services could have been made in relation to these provisions since they have not taken effect. In the January 2021 final rule, we included a robust regulatory impact analysis of these provisions. Because the final rule has not gone into effect, and this proposal would repeal the provisions, there has not been an impact from these provisions nor would there be an impact, relative to current coverage practice, upon repeal; however, effects would be non-negligible relative to the future trajectory without this proposed repeal.

In the MCIT/R&N final rule, we examined the impact of the final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). The MCIT/R&N 2021 final rule reached the economic threshold and thus was considered a major rule. Because this proposed rule would completely repeal the provisions, this proposed rule also reaches the economic threshold and its finalization is anticipated to be a major rule.

A. MCIT Pathway

CMS considered alternatives to repealing the MCIT pathway and the definition of reasonable and necessary, such as maintaining the provisions of the MCIT/R&N final rule and further delaying the effective date. For the reasons described in detail in section II. of this proposed rule such as patient safety and need for further public engagement, we chose to propose to repeal the provisions. We note that further delay of the MCIT/R&N final rule would not alter the patient safety concerns inherent in the MCIT pathway.

As described in the MCIT/R&N final rule, the impacts of the MCIT pathway and defining ''reasonable and necessary'' were hard to quantify without knowing the specific Breakthrough Devices that would seek MCIT and other items and services that would be included in future NCDs and LCDs and the criteria that CMS will use for determining which commercial insurers will be considered.

B. ''Reasonable and Necessary'' Definition

In order to demonstrate the potential impact on Medicare spending for the definition of ''reasonable and necessary'' in the MCIT/R&N final rule we developed scenarios that illustrated the impact of implementing the two alternatives considered (no change/not codifying a definition and codifying a definition). One of the options was making no change, that is not codifying the definition of ''reasonable and necessary'' in regulations. The impact for no change was $0, thus, we reflect that value in Table 1 as repealing the MCIT/R&N final rule would have the same impact. The number of NCDs and LCDs finalized in a given year can vary and the cost of items and services within the coverage decisions varies. Further, while we reviewed coverage of items and services, we did not take into account unique Medicare rules regarding which type of providers/clinicians may furnish certain services, place of service requirements, or payment rules. Our analysis was based on whether Medicare covered or non-covered an item or service and whether we could find coverage for that item or service by any commercial insurer. Lastly, this impact analysis was based on the numbers of NCDs and LCDs finalized in 2020 (see Table 1).

In 2020, CMS and the MACs finalized 3 NCDs and 31 LCDs (This number represents new LCDs in 2020 and made publicly available via the Medicare Coverage Database. If more than one MAC jurisdiction issued an LCD on the same item or service with the same coverage decision, only 1 of the LCDs was included in the count.)

Of the NCDs finalized in 2020, all 3 resulted in expanded national Medicare coverage. Because none of those NCDs resulted in non-coverage, we did not evaluate whether commercial insurers would have covered the item or service. Therefore, based on 2020 data for NCDs only, the impact would be $0.

Of the 31 LCDs, 27 provided Medicare positive coverage and 4 resulted in non-coverage. For those items and services non-covered we identified 3 of those items and services were covered in at least 1 commercial insurer policy. For these non-covered items and services we established that the possible range of the cumulative cost of covering them could be from $0 to $3.4 billion for a single year (based on price and approximate Medicare beneficiary utilization). Because our analysis looked for any commercial insurer that covered the item or service, the cost may be less when utilizing commercial insurer polices that represent a majority of covered lives. In addition, even if a commercial insurer covers an item or service, the final rule did not require automatic Medicare coverage. Therefore, not all items and services that are non-covered by Medicare but covered by commercial insurance would be presumed covered under the MCIT/R&N final rule. Rather, commercial insurer coverage would have been a factor that CMS would have taken into account as part of the body of evidence in determining coverage through the NCD and LCDs processes. Because not all commercial insurer positive coverage will necessarily translate to Medicare coverage and because CMS was to define which types of commercial insurers (based on majority of covered lives) would be relevant, we believe that commercial insurer coverage impact is likely much smaller, closer to 15 to 25 percent of $3.4 billion, that is, $51 to $880 million.

TABLE 1—ILLUSTRATED IMPACT FOR THE MEDICARE PROGRAM BY DEFINITION OF REASONABLE AND NECESSARY

	Estimated change in Medicare costs for the alternatives considered for the MCIT/R&N final rule		Commercial insurer coverage as sole determinant
	No change (not codifying a definition)	Codified definition	
Coverage Determinations (NCDs and LCDs).	$0	$51–880 million	$3.4+ billion.

C. MCIT Pathway

In the MCIT/R&N final rule specifically for MCIT, we considered regulatory alternatives to combine Medicare coverage with clinical evidence development under section 1862(a)(1)(E) of the Act, to take no regulatory action, or to adjust the duration of the MCIT pathway. The impact of implementing the MCIT pathway was difficult to determine without knowing the specific Breakthrough Devices that would be covered. In addition, many of these devices would be eligible for coverage in the absence of the rule, such as through a local or national coverage determination, so the impact for certain items may be the acceleration of coverage by just a few months. Furthermore, some of these devices would be covered immediately if the MACs decide to pay for them, which would result in no impact on Medicare spending for devices approved under this pathway. However, it is possible that some of these Breakthrough Devices would not otherwise be eligible for coverage in the absence of the rule. Because it was not known how these new technologies would otherwise come to market and be reimbursed, it was not possible to develop a point estimate of the impact. In general, we believed the MCIT coverage pathway would range in impact from having no impact on Medicare spending, to a temporary cost for innovations that are adopted under an accelerated basis.

The decision to enter the MCIT pathway would have been voluntary for the manufacturer. Because manufacturers typically join the Medicare coverage pathway that is most financially beneficial to them, this could result in selection against the existing program coverage pathways (to what degree is unknown at this point). In addition, the past trend of new technology costing more than existing technology could lead to a higher cost for Medicare if this trend continued for technologies enrolling in the MCIT pathway. Nevertheless, new technology may also mitigate ongoing chronic health issues or improve efficiency of services thereby reducing some costs for Medicare.

To demonstrate the potential impact on Medicare spending, for the MCIT/R&N final rule the CMS Office of the Actuary (OACT) developed three hypothetical scenarios that illustrate the impact of implementing the MCIT pathway. Scenarios two and three assumed that the device would not have been eligible for coverage in the absence of the proposed rule (see Table 2). The illustration used the new devices that applied for a NTAP in FY 2020 as a proxy for the new devices that would utilize the MCIT pathway. The submitted cost and anticipated utilization for these devices was published in the **Federal Register**.[8] In addition, we assumed that two manufacturers would elect to utilize the MCIT pathway in the first year, three manufacturers in the second year, four manufacturers in the third year, and five manufacturers in the fourth year each year for all three scenarios. This assumption is based on the number of medical devices that received FY 2020 NTAP and were non-covered in at least one MAC jurisdiction by LCDs and related articles and our impression from the FDA that the number of devices granted breakthrough status is increasing. For the first scenario, the no-cost scenario, we assumed that all the devices would be eligible for coverage in the absence of MCIT. If the devices received coverage and payment nationally and at the same time then there would be no additional cost under this pathway. For the second scenario, the low-cost scenario, we assumed that the new technologies would have the average costs ($2,044) and utilization (2,322 patients) of similar technologies included in the FY 2020 NTAP application cycle. Therefore, to estimate the first year of MCIT, we multiplied the add-on payment for a new device by the anticipated utilization for a new device by the number of anticipated devices in the pathway ($2,044 × 2,322 × 2 = $ 9.5 million). For the third scenario, the high-cost scenario, we assumed the new technologies would receive the maximum add-on payment from the FY2020 NTAP application cycle ($22,425) and the highest utilization of a device (6,500 patients). Therefore, to estimate for the first year of MCIT, we estimated similarly ($22,425 × 6,500 patients × 2 = $ 291.5 million). For subsequent years, we increased the number of anticipated devices in the

[8] FY 2020 Hospital Inpatient Prospective Payment System (IPPS) Proposed Rule (84 FR 19640 and 19641) (May 3, 2019) *available at https://www.govinfo.gov/content/pkg/FR-2019-05-03/pdf/2019-08330.pdf* (accessed October 17, 2019).

pathway by three, four, and five in the last two scenarios until 2024.[9] In addition to not taking into account inflation, the illustration does not reflect any offsets for the costs of these technologies that would be utilized through existing authorities nor the cost of other treatments (except as noted). It is not possible to explicitly quantify these offsetting costs but they could substantially reduce or eliminate the net program cost. However, by assuming that only two to five manufacturers would elect MCIT coverage, we implicitly assumed that, while more manufacturers could potentially elect coverage under MCIT, the majority of devices would have been covered under a different coverage pathway. Therefore, a substantial portion of the offsetting costs are implicitly reflected.

Based on this analysis, there was a range of potential impacts of MCIT as shown in Table 2. The difference between the three estimates demonstrates how sensitive the impact is to the cost and utilization of these unknown devices.

Because MCIT has not yet been implemented, we lack evidence with which to update the earlier estimates, so Table 2, only differs from the analogous table accompanying the MCIT/R&N final rule in terms of the sign (that is, the direction) on the estimates and a shifting of the time horizon by one year so as to avoid stating this proposed rule would have effects in the nearly-ended FY 2021.

TABLE 2—ILLUSTRATED IMPACT ON THE MEDICARE PROGRAM BY MCIT COVERAGE PATHWAY

	Costs (in millions)			
	FY 2022	FY 2023	FY 2024	FY 2025
No-cost Scenario	$0	$0	$0	$0
Low-cost Scenario	−9.5	−23.7	−42.7	−66.4
High-cost Scenario	−291.5	−728.8	−1,311.9	−2,040.7

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Some hospitals and other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $7.5 million to $38.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. For the MCIT/R&N final rule, we reviewed the Small Business Administration's Table of Small Business Size Standards Matched to North American Industry Classification System (NAICS) Codes to determine the NAICS U.S. industry titles and size standards in millions of dollars and/or number of employees that apply to small businesses that could be impacted by this rule. We determined that small businesses potentially impacted by that rule include surgical and medical instrument manufacturers (NAICS code 339112, dollars not provided/1,000 employees), Offices of Physicians (except Mental Health Specialists) (NAICS code 621111, $12 million/employees not provided), and Freestanding Ambulatory Surgical and Emergency Centers (NAICS code 621493, $16.5 million/employees not provided). Because the impact of this proposed rule would be no change in current coverage policy, we determined that small businesses identified would not be impacted by this proposed rule. Given the nature of the breakthrough devices market authorized thus far and the timely notification of the MCIT/R&N final rule's delay of effective date, we do not anticipate that small businesses would have made investment decisions or experienced a loss of anticipated positive reimbursement as a result of the MCIT/R&N final rule. Because MCIT has not gone into effect, and we are proposing to repeal the rule, payments have not occurred nor would they occur under MCIT; therefore, the impact of this proposed rule is neither an increase nor decrease in revenue for providers. We are not preparing a further analysis for the RFA because we have determined, and the Secretary of the Department of Health and Human Services (the Secretary) certifies, that the proposed rule and this subsequent final rule will not have a significant negative economic impact on a substantial number of small entities because small entities are not being asked to undertake additional effort or take on additional costs outside of the ordinary course of business.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that the proposed rule and the final rule would not have a significant impact on the operations of a substantial number of small rural hospitals because small rural hospitals are not being asked to undertake additional effort or take on additional costs outside of the ordinary course of business. Obtaining Breakthrough Devices for patients is at the discretion of providers. We are not requiring the purchase and use of Breakthrough Devices. Providers should continue to work with their patients to choose the best treatment. For small rural hospitals that provide Breakthrough Devices to their patients, this proposed rule would not change the way they are currently covered through the Medicare program.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2021, that threshold was

[9] An indirect cost of the proposed rule would be increased distortions in the labor markets taxed to support the Medicare Trust Fund. Such distortions are sometimes referred to as marginal excess tax burden (METB), and Circular A–94—OMB's guidance on cost-benefit analysis of federal programs, available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A94/a094.pdf*—suggests that METB may be valued at roughly 25 percent of the estimated transfer attributed to a policy change; the Circular goes on to direct the inclusion of estimated METB change in supplementary analyses. If secondary costs—such as increased marginal excess tax burden is, in the case of this final rule—are included in regulatory impact analyses, then secondary benefits must be as well, in order to avoid inappropriately skewing the net benefits results, and including METB only in supplementary analyses provides some acknowledgement of this potential imbalance.

approximately $158 million. This proposed rule would have no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this final rule does not impose any costs on State or local governments, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

IV. Waiver of the 60-Day Public Comment Period

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment prior to a rule taking effect in accordance with section 1871 of the Act and section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b). Section 1871(a)(2) of the Act provides, in relevant part, that no rule, requirement, or other statement of policy that establishes or changes a substantive legal standard governing the scope of benefits, the payment for services, or the eligibility of individuals, entities, or organizations to furnish or receive services or benefits under Medicare shall take effect unless it is promulgated through notice and comment rulemaking. Unless there is a statutory exception, section 1871(b)(1) of the Act generally requires the Secretary to provide a period of not less than 60 days for public comment. Similarly, under 5 U.S.C. 553(b), the agency is required to publish a notice of proposed rulemaking in the **Federal Register** before a substantive rule takes effect.

However, section 1871(b)(2) of the Act, permits exceptions to the 60-day time period, including in situations where there would be good cause under 5 U.S.C. 553(b). Section 553(b) of the APA permits no public comment period when the agency, for good cause, finds the notice and public procedure are impracticable, unnecessary, or contrary to the public interest. We find good cause to reduce the public comment period to 30 days with respect to the proposed repeal of the MCIT/R&N final rule that would otherwise become effective on December 15, 2021. If we were to provide the full 60-day public comment period on this proposed rule, there would not be adequate opportunity to meaningfully consider public comments before a final action was needed. In addition, we have already provided two opportunities for public comments relating to the subject matter of this rule earlier this year in connection with the delay of the effective date. Although repealing a final rule is different than delaying the effective date, the familiarity with the subject matter reduces the time the public needs to formulate comments on this proposed rule. Based on the prior comment periods, we are aware that some public commenters opposed to the MCIT/R&N final rule are likely to support repeal, while other commenters were in favor of implementing that rule. The 30-day public comment period will provide another opportunity to submit views on the proposed repeal, as well as suggestions for future rulemaking. Under these specific circumstances, we find that a 60-day comment period is unnecessary and a 30-day public comment period will provide a sufficient opportunity for the public to fully participate in this rulemaking and that there is good cause to reduce the time period to 30 days.

We also find good cause to provide for a 30-day public comment period in light of the potential for harm to Medicare beneficiaries should this proposed repeal rule not be finalized before the effective date of the MCIT/R&N final rule. If we did not finalize this rule by the effective date, there would be confusion and uncertainty among beneficiaries and their treating clinicians of coverage if the proposed repeal rule became effective and then rescinded at a later date. To avoid confusion and uncertainty this rule must be finalized no later than December 15, 2021. In order for the repeal rule to be finalized by the current MCIT effective date of December 15, 2021, CMS would require 30 days for public comment once the proposed rule is posted, an additional 30 days for CMS to review the comments, draft and post the repeal final rule, and an additional 30-day notice before the repeal final rule becomes effective.

As noted previously, the MCIT/R&N final rule did not have sufficient patient protections. While the MCIT/R&N rule attempted to address concerns about accelerating coverage of new devices, significant concerns persist about the availability of clinical evidence on the devices when used in the Medicare population, including the benefit or risks of these devices with respect to use in the Medicare population. For example, there is no requirement that the studies for FDA market-approval include Medicare patients. Medicare patients have different clinical profiles and considerations due to the complexity of their medical conditions and concomitant treatments compared to other age groups. Further, the MCIT/R&N final rule takes away tools that CMS has to deny coverage when it becomes apparent that a particular device can be harmful to the Medicare population. To remove a device from Medicare coverage under MCIT/R&N final rule, FDA must issue a safety communication, warning letter, or remove the device from the market. Therefore, if CMS observes a trend of higher risk or harm with a device in the Medicare population, CMS authority to expeditiously deny, limit to the appropriate patient population or withdraw coverage is limited.

For all the aforementioned reasons, we find good cause to waive the 60-day comment period and provide a 30-day comment period for this proposed rule.

V. Response to Comments

Because of the large number of public comments, we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on September 10, 2021.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Diseases, Health facilities, Health professions, Medical devices, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR part 405 as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

■ 1. The authority for part 405 continues to read as follows:

Authority: 42 U.S.C. 263a, 405(a), 1302, 1320b–12, 1395x, 1395y(a), 1395ff, 1395hh, 1395kk, 1395rr, and 1395ww(k).

§ 405.201 [Amended]

■ 2. Section 405.201(b) is amended by removing the definition for ''Reasonable and necessary''.

Subpart F—[Removed and Reserved]

■ 3. Remove and reserve subpart F, consisting of §§ 405.601 through 405.607.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2021–20016 Filed 9–13–21; 4:15 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 27

[WT Docket No. 19–348; DA 21–1024; FRS 44893]

Wireless Telecommunications Bureau Seeks Comment on the Selection Process for and Operation of the Reimbursement Clearinghouse for the 3.45 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Wireless Telecommunications Bureau (the Bureau) seeks comment on the appropriate industry stakeholders to form a search committee to select a Reimbursement Clearinghouse (Clearinghouse) to oversee the reimbursement of relocation expenses for certain secondary non-federal radiolocation licensees in the 3.45–3.55 GHz band (3.45 GHz band). The Bureau also seeks comment on other issues related to the Clearinghouse search committee process.

DATES: Interested parties may file comments on or before September 30, 2021; and reply comments on or before October 12, 2021.

ADDRESSES: You may submit comments, identified by WT Docket No. 19–348, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/* in docket number WT Docket No. 19–348. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings in response to this Public Notice may be sent by hand or messenger delivery, 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.
- Until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy*.

FOR FURTHER INFORMATION CONTACT: Joyce Jones, Wireless Telecommunications Bureau, Mobility Division, (202) 418–1327 or *joyce.jones@fcc.gov*. For information regarding the PRA information collection requirements, contact Cathy Williams, Office of Managing Director, at 202–418–2918 or *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice in WT Docket No. 19–348, DA 21–1024, released August 20, 2021. The full text of the Public Notice is available for public inspection at the following internet address: *https://www.fcc.gov/document/345-ghz-clearinghouse-search-committee-public-notice.* Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *FCC504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY). Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before the dates indicated on the first page of this document.

Ex Parte Rules

This proceeding shall continue to be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules (47 CFR 1.1200). Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Supplemental Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980 (RFA), the Bureau has prepared a Supplemental Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and requirements proposed in the Public Notice. It requests written public comment on the Supplemental IRFA contained in the Public Notice. Comments must be filed in accordance with the same deadlines as comments filed in response to the Public Notice as set forth on the first page of this document and have a separate and distinct heading designating them as responses to the Supplemental IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the Public Notice, including the Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Act Analysis

This document contains proposed information collection requirements.

The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) 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 it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Synopsis

In the 3.45 GHz Band Second R&O, the Commission adopted rules to make 100 megahertz of mid-band spectrum available for flexible use throughout the contiguous United States. To facilitate this goal, the Commission previously had determined that secondary, non-federal radiolocation licensees in the band would be relocated to the 2.9–3.0 GHz band. In the 3.45 GHz Band Second R&O, the Commission further determined that secondary, non-federal radiolocation authorizations would sunset 180 days after new 3.45 GHz Service licenses are granted in the band. In addition, the Commission required new flexible-use licensees in the 3.45 GHz Service to reimburse secondary, non-federal radiolocation licensees for reasonable costs related to the relocation of those operations to the 2.9–3.0 GHz band, including the costs of a relocation clearinghouse's administration of the reimbursement. Specifically, each new 3.45 GHz Service licensee will be responsible for reimbursement of a pro rata share of reasonable relocation costs of non-federal radiolocation operations.

The Commission in the 3.45 GHz Band Second R&O delegated authority to the Bureau, working in coordination with the Office of the Managing Director, to develop and implement a clearinghouse selection process similar to the process used in the 3.7 GHz proceeding. Consistent with that delegation, the Bureau now seeks comment on the appropriate industry stakeholders to be included in the search committee for a 3.45 GHz band Clearinghouse. As in the 3.7 GHz proceeding, the Commission in the 3.45 GHz Band Second R&O provided for the creation of a neutral, independent clearinghouse to oversee the collection and distribution of relocation reimbursement payments from new 3.45 GHz Service licensees to non-federal secondary radiolocation incumbents. Unlike in the 3.7 GHz context, however, in the 3.45 GHz proceeding, the Commission did not identify the specific industry stakeholders who would compose the search committee to select the Clearinghouse.

In the 3.7 GHz proceeding, the Commission determined that the clearinghouse search committee would be composed of nine members appointed by nine entities that the Commission found, collectively, reasonably represented the interests of the stakeholders in the 3.7 GHz band transition. These entities represented incumbents in the band (space station operators—three entities, and earth station operators—three entities) and prospective flexible-use licensees (three entities). The Commission determined that the range of entities it had chosen would fairly represent the broad interests of the relevant stakeholders in the 3.7 GHz band transition. The Commission directed the search committee to proceed by consensus, but noted that if a vote on the selection of a clearinghouse was required, it would be by a majority vote.

As in the 3.7 GHz proceeding, the Bureau expects that an effective 3.45 GHz Clearinghouse search committee should be composed of a mix of entities representing incumbent and prospective licensee interests. The Bureau seeks comment on which industry stakeholders should be included in the 3.45 GHz Clearinghouse search committee. The Bureau notes that in this proceeding, incumbents are two broadcasters—NBCUniversal and Nexstar—operating weather radar systems in the band. Are incumbent interests sufficiently aligned such that one entity can represent both incumbents? Regarding prospective licensee interests, the Bureau anticipates Auction 110 for 3.45 GHz Service licensees to attract a variety of participants. Who should represent these prospective licensee interests on the search committee? Should it be one or more individual service providers, one or more industry associations? Are industry associations better positioned to serve as clearinghouse participants than individual service providers, particularly in advance of known auction winners? Should the Bureau take a different approach, such as combining categories of stakeholders? Given that each licensee, regardless of size or location, must pay a pro rata share of the relocation costs, is there a need for separate representation of small and rural businesses and if so, on what basis? Are there any other entities that should be included in the search committee?

The Bureau also seeks comment on the optimal number of members to include on the search committee. As noted above, the 3.7 GHz search committee was composed of nine members. As the Commission noted, compared to the 3.7 GHz band transition, however, the incumbent relocation in the 3.45 GHz band presents a less complex and costly process, with only two incumbents to be relocated at an estimated cost of $3.1 million. In light of the relatively simpler relocation process involved here, is a nine-member search committee warranted or necessary? Would a smaller committee size suffice and perhaps be more efficient here? For example, would it be sufficient to have three members here—one representing the relocating incumbents, one representing the wireless industry, and one representing other prospective bidders in the band? If not, what other interests or combinations of interests should be included?

Consistent with the 3.7 GHz proceeding, the Bureau proposes that after it releases a public notice announcing the entities that will comprise the search committee, each selected search committee entity would nominate one individual to serve on the search committee. The Bureau seeks comment on this proposal and any alternatives. Further, as in the 3.7 GHz proceeding, the Bureau proposes that the search committee would proceed by consensus, but if a vote on the selection of a clearinghouse is required, it would be by a majority vote. The Bureau also proposes that the search committee be composed of an odd number of representatives to prevent deadlock. The Bureau seeks comment on these proposals.

In the 3.7 GHz proceeding, the Commission directed the search committee to notify the Commission of the detailed selection criteria for the position of clearinghouse, consistent with the qualifications, roles, and duties of the Clearinghouse. The Commission also asked the search committee to ensure that the Clearinghouse meets relevant best practices and standards in its operation to ensure an effective and efficient transition. Consistent with this requirement, the 3.7 GHz band search committee submitted to the Commission a Request for Proposal that detailed the selection criteria and instructions for filing proposals for the 3.7 GHz band clearinghouse. The Bureau proposes that the search committee in the 3.45 GHz Service also submit to the Bureau detailed selection criteria for the role of Clearinghouse; such selection criteria must be consistent with the 3.45 GHz

Band Second R&O and the Commission's rules. Should the Bureau include more specific requirements for the search committee's selection criteria? If so, what selection criteria are appropriate here? Further, should the search committee provide copies of the proposals or applications submitted to it by the potential Clearinghouse applicants? What oversight role by the Bureau is appropriate to ensure proper performance of the search committee and ultimately the entity that is selected as the Clearinghouse? The Bureau seeks comment on these issues.

The Bureau notes that, in the 3.7 GHz proceeding, the Commission instructed the search committee to impose a series of specific requirements on the Clearinghouse's work in administering the transition, *e.g.,* to (1) engage in strategic planning and adopt goals and metrics to evaluate its performance, (2) adopt internal controls for its operations, (3) use enterprise risk management practices, and (4) use best practices to protect against improper payments and to prevent fraud, waste, and abuse in its handling of funds. The Commission did not impose those requirements for this transition. The comparatively smaller size and lower level of complexity of the 3.45 GHz transition may mean imposing similar requirements on the 3.45 GHz Clearinghouse is unnecessary. The Bureau seeks comment on whether it should direct the search committee to require the Clearinghouse to fulfill some or all of these requirements. Are there alternate requirements we should direct the search committee to require? To what extent should the Bureau supervise the compliance with any such requirements?

In addition, we seek comment on the necessity of the search committee releasing a formal Request for Proposal here or whether a less formal selection process may be appropriate for the relocation process anticipated in the 3.45 GHz band. The Bureau seeks comment on any alternative proposals for the search committee to select the Clearinghouse, as long as any such alternatives are consistent with 3.45 GHz Band Second R&O and related rules. The Bureau also seeks comment on any other ways in which to tailor the Clearinghouse search committee process to the unique circumstances of the 3.45 GHz band.

Finally, the Bureau notes that the Commission's Prohibited Communications rules are in effect for this proceeding, and reminds interested parties to be mindful of these rules when speaking publicly about this proceeding, including through the filing of comments in response to this document.

Lists of Subjects in 47 CFR Parts 1, 2, and 27

Administrative practice and procedure, Common carriers, Communications common carriers, Telecommunications, Wireless communication services.

Federal Communications Commission.

Amy Brett,

Acting Chief of Staff, Wireless Telecommunications Bureau.

[FR Doc. 2021–18585 Filed 9–14–21; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 86, No. 176
Wednesday, September 15, 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

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

[Docket No. RBS–21–BUSINESS–0029]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service (RBCS), Rural Housing Service (RHS), Rural Utilities Service (RUS), USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces RBCS, RHS, and RUS', agencies of the USDA Rural Development (RD) mission area, intention to request an extension to a currently approved information collection for the Strategic Economic and Community Development Program.

DATES: Comments on this notice must be received by November 15, 2021 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Lynn Gilbert, Regulations Management Division, Innovation Center, U.S. Department of Agriculture; *lynn.gilbert@usda.gov,* (202) 690–2682.

SUPPLEMENTARY INFORMATION:

Title: Strategic Economic and Community Development.

OMB Number: 0570–0068.

Expiration Date of Approval: 02/28/22.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: As authorized under the Agricultural Act of 2018 (2018 Farm Bill), the Strategic Economic and Community Development program will make awards using reserved funding through RD's programs to fund projects that support the implementation of multijurisdictional and multisectoral strategic community investment plans. The programs for which reserved funds may be established and priority points awarded (which are referred to as the ''covered programs'') are:

- Community Facility Grants
- Community Facility Guaranteed Loans
- Community Facility Direct Loans
- Water and Waste Disposal Loans and Grants
- Water and Waste Disposal Guaranteed Loans
- Business and Industry Guaranteed Loans
- Rural Business Development Grants
- Community Connect Grant
- Rural Community Development Initiative Grant
- Tribal College Initiative Grants
- Intermediary Relending Program
- Mutual Self-Help Housing Technical Assistance Grants
- Rural Housing Site Loans
- Housing Preservation Grants
- Farm Labor Housing Direct Loans and Grants
- Multi-Family Housing Loan Guarantees
- Distance Learning and Telemedicine Loans and Grants
- Rural Energy for America Program
- Rural Economic Development Loans and Grants
- Rural Energy Savings Program
- Value-Added Producer Grants
- Household Water Well System Grant Program
- Solid Waste Management Grant

To be eligible, projects must first be eligible for funding under the covered programs. In addition, projects must be carried out in rural areas and support partial or full implementation of a multi-jurisdictional and multi-sectoral strategic community investment plan.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4.87 hours per response.

Respondents: Rural businesses; units of State, Local and Tribal government; instrumentalities of a Local, State or Tribal government; special districts; councils of government; non-profit organizations; associations; academic institutions; public bodies and commercial lenders.

Estimated Number of Respondents: 275.

Estimated Number of Responses per Respondent: 1.70.

Estimated Total Annual Burden on Respondents: 2,290.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of RD, including whether the information will have practical utility; (2) the accuracy of the RD's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent by the Federal eRulemaking Portal: Go to *https://www.regulations.gov* and, in the ''Search'' box, type in the Docket No. 0570–0068. A link to the Notice will appear. You may submit a comment here by selecting the ''Comment'' button or you can access the ''Docket'' tab, select the ''Notice,'' and go to the ''Browse & Comment on Documents'' Tab. Here you may view comments that have been submitted as well as submit a comment. To submit a comment, select the ''Comment'' button, complete the required information, and select the ''Submit Comment'' button at the bottom. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link at the bottom. Comments on this information collection must be received by November 15, 2021.

All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Justin Maxon,

Deputy Under Secretary, Rural Development.

[FR Doc. 2021–19919 Filed 9–14–21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the California Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the California Advisory Committee (Committee) will hold a series of meetings via web video conference on the dates and times listed below for the purpose of reviewing their project proposal on the affect of AB5 on minority communities and women.

DATES: These meetings will be held on:

- Friday, October 29, 2021, from 12:30 p.m.–2:00 p.m. Pacific Time
- Friday, November 12, 2021, from 2:00 p.m.–3:30 p.m. Pacific Time
- Friday, December 3, 2021, from 12:30 p.m.–2:00 p.m. Pacific Time
- Wednesday, December 15, 2021, from 2:00 p.m.–3:30 p.m. Pacific Time

October 29th Public Webex Registration Link: https://tinyurl.com/2vpu8ehp.

November 12th Public Webex Registration Link: https://tinyurl.com/28m25ccn.

December 3rd Public Webex Registration Link: https://tinyurl.com/mtmwzhue.

December 15th Public Webex Registration Link: https://tinyurl.com/42zaek.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO), at *bpeery@usccr.gov* or by phone at (202) 701–1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the public WebEx registration link listed above. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery at *bpeery@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office/Advisory Committee Management Unit at (202) 701–1376.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkUAAQ.*

Please click on the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email address.

Agenda

I. Welcome & Roll Call
II. Discussion of Draft
III. Public Comment
IV. Adjournment

Dated: September 10, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–19889 Filed 9–14–21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nevada Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Nevada Advisory Committee (Committee) will hold a meeting via web conference on Monday, September 20, 2021, from 12:00 p.m. to 1:30 p.m. Pacific Time. The purpose of the meeting is to review and vote on report focused on civil rights and remote learning.

DATES: This meeting will be held on Monday, September 20, 2021, from 12:00 p.m. to 1:30 p.m. Pacific Time.

Webex Information: Register online *https://civilrights.webex.com/meet/afortes.*

Audio: (800) 360–9505, ID: 199–167–8181.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, Designated Federal Officer (DFO) at *afortes@usccr.gov* or by phone at (202) 681–0857.

SUPPLEMENTARY INFORMATION: Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit Office within 30 days following the meeting. Written comments may be mailed to Ana Victoria Fortes at *afortes@usccr.gov* in the Regional Programs Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Programs Unit Office (202) 681–0587.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlJAAQ.*

Please click on the ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Review Report
III. Public Comment
IV. Vote on Report

V. Next Steps
VI. Adjournment

Dated: September 10, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–19890 Filed 9–14–21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Massachusetts Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Massachusetts Advisory Committee to the Commission will convene by conference call on Wednesday, September 29, 2021, at 2:30 p.m. (ET). The purpose of the meeting is to complete the work on its report on hate crimes in Massachusetts.

DATES: Wednesday, September 29, 2021, at 2:30 p.m. (ET).

Public Webex Conference Registration Link (video and audio): *https://bit.ly/3jZYsq9.*

To Joine by Phone Only: Dial 1–800–360–9505; Access code: 2764 827 9748.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor at *ero@usccr.gov* or by phone at 202–921–2212.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the WebEx link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided above for the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Barbara Delaviez at *ero@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at the *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Wednesday, September 29, 2021; 2:30 p.m. (ET)

1. Roll call
2. AAPI Hate Crimes Report completion
3. Next Steps
4. Public Comment
5. Other Business
6. Adjourn

Dated: September 10, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–19886 Filed 9–14–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Data Collection Form for Reporting on Audits of States, Local Governments, Indian Tribes, Institutions of Higher Education, and Nonprofit Organizations

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on April 22, 2021, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Commerce.

Title: Data Collection Form for Reporting on Audits of States, Local Governments, Indian Tribes, Institutions of Higher Education, and Nonprofit Organizations.

OMB Control Number: 0607–0518.

Form Number(s): SF–SAC.

Type of Request: Regular submission, Request for an Extension, without Change, of a Currently Approved Collection.

Number of Respondents: 80,000 (40,000 auditees and 40,000 auditors).

Average Hours per Response: 100 hours for large auditees (approx. 400 respondents) and 21 hours for all other auditees (approx. 79,600 respondents).

Burden Hours: 1,711,600.

Needs and Uses: Each year, more than $700 billion in federal assistance awards are expended by more than 100,000 non-federal entities (states, local governments, Indian tribes and tribal organizations, institutions of higher education, and nonprofit organizations) throughout the country. To improve business-like practices and provide greater accountability over federal awards, the Single Audit Act Amendments of 1996 (Pub. L. 104–156) and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200, or Uniform Guidance) imposed certain audit reporting and recordkeeping requirements on non-federal entities/auditees that expend $750,000 or more in federal awards per year, as well as on their auditors.

Non-federal entities are required by the Single Audit Act Amendments of 1996 and Uniform Guidance to have audits conducted of their federal awards and file the resulting reporting packages (Single Audit reports) and data collection forms (Form SF–SAC) with the Federal Audit Clearinghouse (FAC). The Form SF–SAC is Appendix X to 2 CFR part 200. The Office of Management and Budget (OMB) has designated the Census Bureau as the FAC to serve as the government-wide repository of record for Single Audit reports.

The Single Audit process is a primary method used by federal agencies and pass-through entities to provide oversight of federal awards and reduce risk of non-compliance and improper payments. This includes following up on audit findings and questioned costs.

Entities meeting the dollar threshold defined in OMB Uniform Guidance must submit the Form SF–SAC and their Single Audit reporting package to the FAC. The entity must complete the Single Audit submission every fiscal period they meet the reporting dollar threshold.

The information collection provides data about auditees, the federal awards they expend, and the results of their audits. This information is used by entities responsible for overseeing the funding and administration of Federal awards (*e.g.,* Congress, Federal agencies,

and pass-through entities) and entities responsible for administering Federal awards (*e.g.,* state governing officials, county and city councils, board of directors of nonprofit organizations, and senior management of various auditees). The information is used in making decisions about which federal awards and recipients to fund in the future, identifying and resolving areas of noncompliance, and improving the administration and delivery of federal awards.

Federal agencies, non-federal entities, and pass-through entities use submitted Forms SF–SAC and Single Audit reporting packages to ensure federal awards are expended in accordance with applicable laws and regulations. The FAC uses the information on the Form SF–SAC to ensure proper distribution of audit reports to federal agencies and identify non-federal entities who have not filed the required reports. The FAC also uses the information on the Form SF–SAC to create a government-wide database, which contains information on audit results. This database is publicly accessible online at *https://facdissem.census.gov.*

The Uniform Guidance indicates that the FAC is authorized to make the reporting package and the Form SF–SAC publicly available on a website. There is an exception for Indian Tribes and Tribal Organizations (2 CFR 200.512(b)(2)). An auditee that is an Indian Tribe (as defined in the Indian Self-Determination, Education and Assistance Act (ISDEAA), 25 U.S.C 5304) may opt not to authorize the FAC to make the reporting package publicly available on a website. For these exempted auditees, the text of the audit findings, the text of the corrective action plan, and the text portions collected as part of the Notes to the SEFA (all 3 are included in the reporting package) will not be publicly released on the Form SF–SAC.

The data collected by the FAC is used by federal agencies, pass-through entities, non-federal entities, auditors, the Government Accountability Office (GAO), OMB and the general public for information about and management of federal awards and the results of audits.

This information is essential in developing effective government-wide audit policies overseeing federal awards. The Single Audit Act Amendments of 1996 require OMB to perform a biennial review of the threshold that triggers an audit requirement, prescribe a risk-based approach to auditing major programs, and provide guidance on other matters necessary to implement the Single Audit Act. OMB cannot perform its duties required by the Single Audit Act Amendments or develop audit policies without the information provided under this data collection.

This information is exclusively collected via FAC's web-based application, which is designed to assist the respondent in completing the data collection form. Uniform Guidance requires auditees to submit their information to the FAC nine months after their fiscal period has ended or 30 days after receipt of their audit report—whichever comes first. This is an ongoing collection process and there have been no changes to the collection requirements since the last approval.

Affected Public: States, local governments, Indian tribes, institutions of higher education, non-profit organizations (Non-Federal entities) and their auditors.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 31 U.S.C. Section 7501 et. seq. and 2 CFR part 200.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website '. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0607–0518.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–19875 Filed 9–14–21; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–40–2021]

Foreign-Trade Zone (FTZ) 107—Polk County, Iowa; Authorization of Production Activity; Cycle Force Group, LLC (Electric and Non-Electric Cycles); Ames, Iowa

On May 13, 2021, Cycle Force Group, LLC submitted a notification of proposed production activity to the FTZ Board for its facilities within Subzone 107F, in Ames, Iowa.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (86 FR 27379, May 20, 2021). On September 10, 2021, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: September 10, 2021.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2021–19913 Filed 9–14–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–39–2021]

Foreign-Trade Zone (FTZ) 27—Boston, Massachusetts; Authorization of Proposed Production Activity; Wyeth Pharmaceuticals, LLC (mRNA Bulk Drug Substance); Andover, Massachusetts

On May 13, 2021, Wyeth Pharmaceuticals, LLC (Wyeth) submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 27R, in Andover, Massachusetts.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (86 FR 27067, May 19, 2021). On September 10, 2021, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: September 10, 2021.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2021–19915 Filed 9–14–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Emergency Approval; Comment Request; Risks in the Semiconductor Supply Chain

The Department of Commerce (Bureau of Industry and Security) led the 100 Day Supply Chain Review of Semiconductors and Advanced Packaging that was mandated by Presidential Executive Order 14017. On February 24, 2021, President Biden issued Executive Order 14017 (E.O. 14017) on ''America's Supply Chains,'' which directs several federal agency actions to secure and strengthen America's supply chains.

This review, included in the White House Report ''Building Resilient Supply Chains, Revitalizing Domestic Manufacturing, and Fostering Broad-Based Growth (*100-day-supplychain-review-report.pdf* (*whitehouse.gov*)'', identified numerous areas of supply chain vulnerabilities. In addition to the longer-term goals such as strengthening the domestic semiconductor manufacturing ecosystem and promoting U.S. leadership, this report called upon the Department of Commerce to partner with industry to facilitate information flow between semiconductor producers and suppliers and end-users to address the current semiconductor shortage. The ongoing shortages in the semiconductor product supply chain is having an adverse impact on a wide range of industry sectors. With the goal of accelerating the information flow across various segments of the supply chain and identifying data gaps and bottlenecks in the supply chain, the Department is seeking input from interested parties (including domestic and foreign semiconductor design firms, semiconductor manufacturers, materials and equipment suppliers, as well as semiconductor intermediate and end-users).

The Department 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.

Agency: Bureau of Industry and Security, Commerce.

Title: Risks in the Semiconductor Supply Chain.

OMB Control Number: 0694–xxxx.

Form Number(s): 0694–xxxx.

Type of Request: Emergency Clearance Request, new collection.

Number of Respondents: 100.

Average Hours per Response: 4 hours.

Burden Hours: 400.

Needs and Uses: This data is needed to assess the status of the semiconductor industry and identify specific issues and challenges in the supply chain. Qualitative questions are used in some limited cases to complement the statistical data. Using the aggregated form data, the overall goal is to enable Commerce and other government agencies to add transparency on the semiconductor supply and demand mismatch and identify common bottlenecks and chokepoints. This information will advance transparency in the semiconductor supply chain and inform any government or private sector actions to address the ongoing shortage and alleviate the economic impact of the shortage.

Affected Public: Business or other for-profit organizations.

Frequency: One time only.

Respondent's Obligation: Voluntary.

Legal Authority: Executive Order 14017.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within two days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering the title of the collection, ''Risks in the Semiconductor Supply Chain.''

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–19946 Filed 9–14–21; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–848]

Certain Stilbenic Optical Brightening Agents From Taiwan: Final Results of Antidumping Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that the sole producer/exporter subject to this review made sales of subject merchandise in the United States at less than normal value during the period of review (POR), May 1, 2019, through April 30, 2020.

DATES: Applicable September 15, 2021.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0665.

SUPPLEMENTARY INFORMATION:

Background

On July 16, 2021, Commerce published the *Preliminary Results* of the 2019–2020 administrative review of the antidumping duty order on certain stilbenic optical brightening agents (stilbenic OBAs) from Taiwan.[1] This administrative review covers one producer/exporter of the subject merchandise, Teh Fong Ming International Co., Ltd. (TFM). We invited parties to comment on the *Preliminary Results.*[2] No party submitted comments. Accordingly, the final results remain unchanged from the *Preliminary Results.*

Commerce conducted this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [3]

The stilbenic OBAs covered by this *Order* are all forms (whether free acid or salt) of compounds known as triazinylaminostilbenes (*i.e.,* all derivatives of 4,4′-bis [1,3,5- triazin-2-yl] [4] amino- 2,2′-stilbenedisulfonic acid),

[1] *See Stilbenic Optical Brightening Agents from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020,* 86 FR 37741 (July 16, 2021) (*Preliminary Results*).

[2] *Id.*

[3] *See Certain Stilbenic Optical Brightening Agents from Taiwan: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 77 FR 27419 (May 10, 2012) (*Order*).

[4] The brackets in this sentence are part of the chemical formula.

except for compounds listed in the following paragraph. The stilbenic OBAs covered by this *Order* include final stilbenic OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of stilbenic OBA products.

Excluded from this *Order* are all forms of 4,4′-bis[4-anilino-6-morpholino-1,3,5-triazin-2-yl] [5] amino-2,2′-stilbenedisulfonic acid, C40H40N12O8S2 (''Fluorescent Brightener 71''). This *Order* covers the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active stilbenic OBA ingredient, as well as any compositions regardless of additives (*i.e.,* mixtures or blends, whether of stilbenic OBAs with each other, or of stilbenic OBAs with additives that are not stilbenic OBAs), and in any type of packaging.

These stilbenic OBAs are classifiable under subheading 3204.20.8000 of the Harmonized Tariff Schedule of the United States (HTSUS), but they may also enter under subheadings 2933.69.6050, 2921.59.4000 and 2921.59.8090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Final Results of Review

As noted above, Commerce received no comments concerning the *Preliminary Results.* As there are no changes from, or comments upon, the *Preliminary Results,* Commerce finds that there is no reason to modify its analysis and calculations. Accordingly, we adopt the analysis and explanation in our *Preliminary Results* for the purposes of these final results of review and we have not prepared an Issues and Decision Memorandum to accompany this **Federal Register** notice. The final weighted-average dumping margin of 2.91 percent exists for entries of subject merchandise that were produced and exported by TFM during the POR.

Assessment Rates

Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review, in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b). 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).

For TFM, we calculated importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those sales in accordance with 19 CFR 351.212(b)(1).[6] Where an importer-specific assessment rate is *de minimis* (*i.e.,* less than 0.5 percent), the entries by that importer will be liquidated without reference to antidumping duties.

For entries of subject merchandise during the POR produced by TFM for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[7]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of this notice for all shipments of stilbenic OBAs from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for TFM will be 2.91percent, the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by companies not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 6.19 percent, the all-others rate established in the less-than-fair-value investigation.[8] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure

Normally, Commerce discloses to the parties in a proceeding the calculations performed in connection with a final results of review within five days after public announcement of final results.[9] However, because Commerce made no adjustments to the margin calculation methodology used in the *Preliminary Results,* there are no calculations to disclose for the final results of review.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: September 9, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–19912 Filed 9–14–21; 8:45 am]

BILLING CODE 3510–DS–P

[5] *Id.*

[6] In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

[7] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[8] *See Order,* 91 FR at 27420.

[9] *See* 19 CFR 351.224(b).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB420]

Management Track Assessment for Georges Bank Atlantic Cod and Gulf of Maine Atlantic Cod

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: NMFS and the Assessment Oversight Panel (AOP) will convene the Management Track Assessment Peer Review Meeting for the purpose of reviewing both Georges Bank and Gulf of Maine Atlantic cod stocks. The Management Track Assessment Peer Review is a formal scientific peer-review process for evaluating and presenting stock assessment results to managers for fish stocks in the offshore U.S. waters of the northwest Atlantic. Assessments are prepared by the lead stock assessment analyst and reviewed by an independent panel of stock assessment experts called the AOP. The public is invited to attend the presentations and discussions between the review panel and the scientists who have participated in the stock assessment process.

DATES: The public portion of the Management Track Assessment Peer Review Meeting will be held from September 13, 2021—September 15, 2021. The meeting will conclude on September 15, 2021 at 5 p.m. Eastern Standard Time. Please see **SUPPLEMENTARY INFORMATION** for the daily meeting agenda.

ADDRESSES: The meeting will be held via Google Meet (*https://meet.google.com/bqy-awcd-kqv*).

FOR FURTHER INFORMATION CONTACT: Michele Traver, phone: 508–495–2195; email: *michele.traver@noaa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please visit the Northeast Fisheries Science Center (NEFSC) website at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/fishery-stock-assessments-new-england-and-mid-atlantic.* For additional information about the AOP meeting and the stock assessment peer review, please visit the NMFS/NEFSC web page at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/management-track-stock-assessments.*

Daily Meeting Agenda—Management Track Peer Review Meeting

The agenda is subject to change; all times are approximate and may be changed at the discretion of the Peer Review Chair.

MONDAY, SEPTEMBER 13, 2021

Time	Activity	Lead
10 a.m.–9:15 a.m	Welcome/Logistics/Introductions/Process	Russ Brown/Michele Traver.
10:15 a.m.–10:30 a.m	Background/AOP Review	Russ Brown.
10:30 a.m.–11:45 a.m	Gulf of Maine Cod	Charles Perretti.
11:45 a.m. –12:15 p.m	Discussion/Review/Summary	Review Panel.
12:15 p.m.–12:30 p.m	Public Comment	Public.
12:30 p.m.–1:30 p.m	Lunch.	
1:30 p.m.–3 p.m	Gulf of Maine Cod cont.	Charles Perretti.
3 p.m.–3:15 p.m	Break.	
3:15 p.m.–3:45 p.m	Gulf of Maine Cod cont.	Charles Perretti.
3:45 p.m.–4:15 p.m	Discussion/Review/Summary	Review Panel.
4:15 p.m.–4:30 p.m	Public Comment	Public.
4:30 p.m	Adjourn.	

TUESDAY SEPTEMBER 14, 2021

Time	Activity	Lead
9 a.m.–9:15 a.m	Brief Overview and Logistics	Michele Traver/Richard Merrick (Chair).
9:15 a.m.–10:30 a.m	Georges Bank Cod	Kathy Sosebee.
10:30 a.m.–10:45 a.m	Break.	
10:45 a.m.–11:45 a.m	Georges Bank Cod cont.	Kathy Sosebee.
11:45 a.m.–12:15 p.m	Discussion/Review/Summary	Review Panel.
12:15 p.m.–12:30 p.m	Public Comment	Public.
12:30 p.m.–1:30 p.m	Lunch.	
1:30 p.m.–2 p.m	Key Points/Wrap Up	Review Panel.
2 p.m.–4:30 p.m	Report Writing	Review Panel.
4:30 p.m	Adjourn.	

WEDNESDAY, SEPTEMBER 15, 2021

Time	Activity	Lead
9 a.m.–4:30 p.m	Report Writing	Review Panel.
4:30 p.m	Adjourn.	

The meeting is open to the public; however, during the 'Report Writing' session on Tuesday, September 14th, and Wednesday, September 15th, the public should not engage in discussion with the Peer Review Panel.

Special Accommodations

This meeting is physically accessible to people with disabilities. Special

requests should be directed to Michele Traver, via email.

Dated: September 10, 2021.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2021–19949 Filed 9–10–21; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Highly Migratory Species Permit Family of Forms

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on June 8, 2021, (86 FR 30411) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: Atlantic Highly Migratory Species Permit Family of Forms.

OMB Control Number: 0648–0327.

Form Number(s): None.

Type of Request: Regular submission [extension of a current information collection].

Number of Respondents: 34,803.

Average Hours per Response: Renewal applications for the following vessel permits—Atlantic Tunas, HMS Charter/Headboat, HMS Angling, and Swordfish General Commercial, 10 minutes; initial applications for the following vessel permits—Atlantic Tunas, HMS Charter/Headboat, HMS Angling, and Swordfish General Commercial, 34 minutes; One-time application for the IMO/LP number, 30 minutes.

Total Annual Burden Hours: 9,017.

Needs and Uses: This request is for the revision and extension of a current information collection. This collection is being revised to remove the Atlantic tuna dealer permits as this burden is captured under OMB Control Number 0648–0202.

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) is responsible for management of the Nation's marine fisheries. In addition, NMFS must comply with the United States' obligations under the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*). NMFS issues permits to fishing vessels in order to collect information necessary to comply with domestic and international obligations, secure compliance with regulations, and disseminate necessary information.

Regulations at 50 CFR 635.4 require that vessels participating in commercial and recreational fisheries for Atlantic highly migratory species (HMS) obtain a Federal permit issued by NMFS. Vessel permits include Atlantic Tunas (except Longline permits, which are approved under PRA 0648–0205), HMS Charter/Headboat, HMS Angling, and Swordfish General Commercial permits. This action also includes the one-time requirement for commercial vessels greater than 20 meters in length to obtain an International Maritime Organization/Lloyd's Registry (IMO/LR) number.

Affected Public: Business or other for-profit organizations (commercial and for-hire vessel owners), Individuals or households (private recreational vessel owners).

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*)

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0327.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–19942 Filed 9–14–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Pacific Islands Region Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comments.

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 November 15, 2021.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0490 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 Walter Ikehara, Fishery Information Specialist, National Marine Fisheries Service (NMFS), Pacific Islands Regional Office, 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818, (808) 725–5175, *walter.ikehara@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a revision to merge the permit application forms from two

currently approved information collections, 0648–0463 Pacific Islands Region Coral Reef Ecosystem Permit Form and 0648–0577 Non-commercial Permit and Reporting Requirements in the Main Hawaiian Islands bottomfish fishery, into the currently approved collection 0648–0490 Pacific Islands Region Permit Family of Forms, and to extend all included collections to the 0648–0490 expiration date of 3/31/2024. 0648–0463 will be discontinued after the revision is approved. The reporting collection of 0648–0577 will be continued.

The *Magnuson-Stevens Fishery Conservation and Management Act* established the Western Pacific Fishery Management Council (Council), to develop fishery ecosystem plans (FEP) for fisheries in the U.S. Exclusive Economic Zone (EEZ) and high seas of the Pacific Islands Region. These plans, if approved by the Secretary of Commerce, are implemented in Federal regulations by the NOAA NMFS and enforced by NOAA's Office of Law Enforcement and the U.S. Coast Guard (USCG), in cooperation with state and territorial agencies. FEPs establish a management regime and Federal regulations control fishing to prevent overfishing and to ensure the long-term productivity and social and economic benefit of the resources.

Regulations at 50 CFR 665 Subpart F require that a vessel used to fish with longline gear for western Pacific pelagic management unit species (PMUS), land or transship longline caught PMUS, or receive longline caught PMUS from a longline vessel, within the EEZ or management subarea around U.S. islands in the central and western Pacific must be registered to a valid Federal fishing permit. The regulations also require that a vessel used to fish with squid jig gear for pelagic squid species listed in the western Pacific PMUS within the EEZ or management subareas around U.S. islands in the central and western Pacific, or fish with troll and handline gear for PMUS in allowed locations within the EEZ around each of the Pacific Remote Island Areas (PRIA), must be registered to a valid Federal fishing permit.

Regulations at 50 CFR 665 Subparts D and E require that the owner of a vessel used to fish for, land, or transship bottomfish management unit species (BMUS) or ecosystem component species (ECS) using a large vessel (50 ft or longer) in the Guam management subarea, fish commercially for BMUS or ECS in the Commonwealth of the Northern Mariana Islands management subarea, or fish for BMUS or ECS in allowed locations within the EEZ around each of the PRIA, must register it to a valid Federal fishing permit.

Regulations at 50 CFR 665 Subparts B, C, D, and E, require that the owner of a vessel used to fish for, land, or transship crustacean management unit species or ECS in the EEZ or management subareas around American Samoa, Hawaii, Guam, Northern Mariana Islands, or in allowed locations within the EEZ around each of the PRIA, must register it to a valid Federal fishing permit. The regulations also require that a vessel used to fish for precious corals within the EEZ or management subarea around U.S. islands in the central and western Pacific must be registered to a valid Federal fishing permit for a specific precious coral permit area.

Regulations at 50 CFR 665 Subparts B, C, D, and E, require any person in the Pacific Islands Region (1) fishing for, taking, retaining, or using a vessel to fish for coral reef ECS in designated low-use Marine Protected Areas, (2) fishing for any of these species using gear not specifically allowed in the regulations, or (3) fishing for, taking, or retaining any of these species in a coral reef ecosystem management subarea, to obtain and carry a special permit. A receiving vessel owner must also have a transshipment permit for at-sea transshipment of coral reef ecosystem component species. The permit application provides information about the applicant, vessel, fishing gear and method, target species, and projected fishing effort so NMFS and the Council can determine permit eligibility in consultation with the USCG, state or territory fisheries agency, and/or the U.S. Fish and Wildlife Service.

Regulations at 50 CFR 665 Subpart C require that all participants (including vessel owners, operators, and crew) in the boat-based non-commercial bottomfish fishery in the Exclusive Economic Zone around the Main Hawaiian Islands to obtain a Federal bottomfish permit. Participants are exempt if they hold a current State of Hawaii Commercial Marine License.

The information collected is needed to identify participants in the fishery, determine qualifications for permitting, support effective enforcement of fishery regulations, facilitate fisheries management, and provide a communication link between NMFS and fishermen.

II. Method of Collection

Respondents may submit applications and required documents via secure email, or via online application systems when implemented.

III. Data

OMB Control Number: 0648–0490.

Form Number(s): None.

Type of Review: Regular submission (Revision and extension of an existing collection).

Affected Public: Business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 281.

Estimated Time per Response: Hawaii longline limited entry permit: Renew via secure email—30 min; renew online—15 min; transfer—1 hr.; apply for closed area exemption—2 hr. American Samoa longline limited entry permit: Renew or apply for additional permit via secure email—45 min; transfer—1 hr. 15 min. All other permits: Apply via secure email—30 min. Permit appeal—2 hr.

Estimated Total Annual Burden Hours: 150.5.

Estimated Total Annual Cost to Public: $17,655.48.

Respondent's Obligation: Mandatory.

Legal Authority: 50 CFR 665.

IV. Request for Comments

We are soliciting public comments to permit the Department 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. 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. 2021–19815 Filed 9–14–21; 8:45 am]

BILLING CODE 3510–22–P

ELECTION ASSISTANCE COMMISSION

Agency Information Collection Activities: Extension of Previously Approved Collection

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (''PRA''), the U.S. Election Assistance Commission (''EAC'') gives notice that it is requesting from the Office of Management and Budget (''OMB'') an extension (without change) of its currently approved National Mail Voter Registration form (OMB Control No. 3265–0015). Section 9(a) of the National Voter Registration Act of 1993 (''NVRA'') and Section 802 of the Help America Vote Act of 2002 (''HAVA'') requires the responsible agency to maintain a national mail voter registration form for U.S. citizens that want to register to vote, to update registration information due to a change of name, make a change of address or to register with a political party by returning the form to their state election office.

DATES: Comments must be received no later than 5 p.m. Eastern Standard Time on November 12, 2021.

ADDRESSES: You may submit written statements with respect to the National Mail Voter Registration form no later than 5 p.m. on November 12, 2021. Statements may be sent via email to *research@eac.gov* and via standard mail addressed to the U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Nichelle Williams, Telephone: (202) 924–1312.

SUPPLEMENTARY INFORMATION: Persons wishing to register to vote may use the National Mail Voter Registration form (''Federal form'' or ''form'') to apply for voter registration. After completing the form, an applicant submits her/his form to their respective state election office for processing. States covered by the NVRA process the information from the form to register an applicant to vote. Neither EAC nor any other Federal agency processes or collects any information from the Federal form that a registration applicant submits to a state. Rather, EAC prescribes the Federal form, and states collect and record the information applicants submit. The Federal form is composed of the registration application, instructions for completing the application (General Instructions and Application Instructions), and state-specific instructions that identify each state's particular requirements. A copy of the current form in English and 14 additional translated languages is available on EAC's website, at *https://www.eac.gov/voters/national-mail-voter-registration-form.*

Affected Public (Respondents): U.S. citizens eligible to vote in jurisdictions that accept and use the National Mail Voter Registration form.

Number of Respondents: 2,500,000.

Responses per Respondent: 1.

Estimated Burden per Response: 0.12 hours per response.

Estimated Total Annual Burden Hours: 291,667 hours annualized.

Frequency: Annually.

Comments: Public 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Obtaining a Copy of the National Mail Voter Registration Form: To obtain a free copy of the registration form: (1) Download a copy at *https://www.eac.gov/voters/national-mail-voter-registration-form;* or (2) write to the EAC (including your address and phone number) at U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001, *Attn:* National Mail Voter Registration Form.

Nichelle Williams,

Director of Research, U.S. Election Assistance Commission.

[FR Doc. 2021–19871 Filed 9–14–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM20–10–000; AD19–19–000]

Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act; Second Supplemental Notice of Workshop

As announced in the Notice of Workshop issued on April 15, 2021, and in the Supplemental Notice of Workshop issued on August 13, 2021, in the above-referenced proceedings, Federal Energy Regulatory Commission (Commission) staff will convene a workshop to discuss certain shared savings incentive approaches that may foster deployment of transmission technologies. The workshop will be held on Friday, September 10, 2021, from approximately 8:30 a.m. to 5:30 p.m. Eastern Time. The workshop will be held virtually via WebEx. Commissioners may attend and participate.

Transmission technologies, as deployed in certain circumstances, may enhance reliability, efficiency, and capacity, and improve the operation of new or existing transmission facilities. The workshop will discuss issues related to shared savings approaches [1] for transmission technologies seeking incentives under Federal Power Act section 219.[2] The workshop will focus on how to calculate *ex ante* and *ex post* benefit analyses for transmission technologies seeking incentives. Specifically, the workshop will explore the maturity of the modeling approaches for various transmission technologies; the data needed to study the benefits/costs of such technologies; issues pertaining to access to or confidentiality of this data; the time horizons that should be considered for such studies; and other issues related to verifying forecasted benefits. The workshop may also discuss other issues, including whether and how to account for circumstances in which benefits do not materialize as anticipated.

Attached to this Supplemental Notice is an updated agenda for the workshop, which includes the final workshop program and speakers. The workshop will be open for the public to attend virtually. Information on the workshop will also be posted on the Calendar of Events on the Commission's website, *http://www.ferc.gov,* prior to the event. The workshop will be transcribed.

[1] *See, e.g.,* WATT Coalition and Advanced Energy Economy September 3, 2021 Comments.

[2] 16 U.S.C. 824s(b)(3).

Transcripts of the workshop will be available for a fee from Ace-Federal Reporters, Inc. (202–347–3700).

For more information about this workshop, please contact David Borden, 202–502–8734, *david.borden@ferc.gov* or Samin Peirovi, 202–502–8080, *samin.peirovi@ferc.gov* for technical questions; Meghan O'Brien, 202–502–6137, *meghan.o'brien@ferc.gov* for legal questions; and Sarah McKinley, 202–502–8368, *sarah.mckinley@ferc.gov* for logistical issues.

Dated: September 9, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–19900 Filed 9–14–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC21–32–000]

Commission Information Collection Activities; FERC–917 & FERC–918; Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the information collections, FERC–917 (Electric Transmission Facilities) and FERC–918 (Standards for Business Practices and Communication Protocols for Public Utilities), which will be submitted to the Office of Management and Budget (OMB) for a review of the information collection requirements.

DATES: Comments on the collection of information are due October 15, 2021.

ADDRESSES: Send written comments on FERC–917 and/or FERC–918) to OMB through *www.reginfo.gov/public/do/PRAMain.* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number (1902–0233) 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. IC21–32–000) 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–917, Electric Transmission Facilities and FERC–918, Standards for Business Practices and Communication Protocols for Public Utilities.

OMB Control No.: 1902–0233.

Type of Request: Three-year extension of the FERC–917 and FERC–918 information collection requirements with no changes to the reporting requirements.

Type of Respondents: Public utilities transmission providers.

Abstract: On February 17, 2007, the Commission issued Order No. 890 [1] to address and remedy opportunities for undue discrimination under the *pro forma* Open Access Transmission Tariff (OATT) adopted in 1996 by Order No. 888.[2] Through Order No. 890, the Commission:

1. Adopted *pro forma* OATT provisions necessary to keep imbalance charges closely related to incremental costs.

2. Increased nondiscriminatory access to the grid by requiring public utilities, working through the North American Electric Reliability Corporation (NERC), to develop consistent methodologies for available transfer capability (ATC) calculation and to publish those methodologies to increase transparency.

3. Required an open, transparent, and coordinated transmission planning process thereby increasing the ability of customers to access new generating resources and promote efficient utilization of transmission.

4. Gave the right to customers to request from transmission providers, studies addressing congestion and/or integration of new resource loads in areas of the transmission system where they have encountered transmission problems due to congestion or where they believe upgrades and other investments may be necessary to reduce congestion and to integrate new resources.

5. Required both the transmission provider's merchant function and network customers to include a statement with each application for network service or to designate a new network resource that attests, for each network resource identified, that the transmission customer owns or has committed to purchase the designated network resource and the designated network resource comports with the requirements for designated network resources. The network customer includes this attestation in the customer's comment section of the request when it confirms the request on the Open Access Same-Time Information System (OASIS).

6. Required with regard to capacity reassignment that: (a) All sales or assignments of capacity be conducted through or otherwise posted on the transmission provider's OASIS on or before the date the reassigned service

[1] Order No. 890, *Preventing Undue Discrimination and Preference in Transmission Service,* 18 FERC ¶ 31,096 (2007), 72 FR 12,266 (2007).

[2] *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g,* Order No. 888–A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

commences; (b) assignees of transmission capacity execute a service agreement prior to the date on which the reassigned service commences; and (c) transmission providers aggregate and summarize in an electric quarterly report the data contained in these service agreements.

7. Adopted an operational penalties annual filing that provides information regarding the penalty revenue the transmission provider has received and distributed.

8. Required creditworthiness information to be included in a transmission provider's OATT. Attachment L must specify the qualitative and quantitative criteria that the transmission provider uses to determine the level of secured and unsecured credit required.

The Commission required a NERC/NAESB [3] team to draft and review Order No. 890 reliability standards and business practices. The team was to solicit comment from each utility on developed standards and practices and utilities were to implement each, after Commission approval. Public utilities, working through NERC, were to revise reliability standards to require the exchange of data and coordination among transmission providers and, working through NAESB, were to develop complementary business practices. Required OASIS postings included:

1. Explanations for changes in ATC values;

2. Capacity benefit margin (CBM) reevaluations and quarterly postings;

3. OASIS metrics and accepted/denied requests;

4. Planning redispatch offers and reliability redispatch data;

5. Curtailment data;

6. Planning and system impact studies;

7. Metrics for system impact studies; and

8. All rules.

Incorporating the Order No. 890 standards into the Commission's regulations benefits wholesale electric customers by streamlining utility business practices, transactional processes, and OASIS procedures, and by adopting a formal ongoing process for reviewing and upgrading the Commission's OASIS standards and other electric industry business practices. These practices and procedures benefit from the implementation of generic industry standards.

The Commission's Order No. 890 regulations can be found in 18 CFR 35.28 (*pro forma* tariff requirements), and 37.6 and 37.7 (OASIS requirements). 18 CFR 35.28(b) states: ''Audit data must remain available for download on the OASIS for 90 days, except ATC/TTC postings that must remain available for download on the OASIS for 20 days. The audit data are to be retained and made available upon request for download for five years from the date when they are first posted in the same electronic form as used when they originally were posted on the OASIS.''

Estimate of Annual Burden: [4] The Commission estimates the annual public reporting burden for the information collections as follows. Please note, the zeroes for respondents and responses are based on having no filings of this type over the past four years. In addition, we estimate no filings during the next three years. The requirements remain in the regulations and are included as part of OMB Control Number 1902–0233.

FERC–917 (Electric Transmission Facilities) and FERC–918 (Standards for Business Practices and Communication Protocols for Public Utilities)

	Number of respondents	Annual number of responses per respondent	Annual number of responses	Average annual burden hrs. & cost [5] per response ($)	Total average annual burden hours & total annual cost [6] ($)	Average annual cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) = (6)
18 CFR 35.28 (FERC–917)						
Conforming tariff changes (Reporting).	20	1	20	20 hrs.; $1,460.00	400 hrs.; $29,200.00	$1,460.00
Revision of Imbalance Charges (Reporting).	21	1	21	25 hrs.; $1,825.00	525 hrs.; $38,325.00	1,825.00
ATC revisions (Reporting) ..	11	1	11	20 hrs.; $1,460.00	220 hrs.; $16,060.00	1,460.00
Planning (Attachment K) (Reporting) [7].	162	1	162	100 hrs., $7,300.00	16,200 hrs., $1,182,600.00 ...	7,300.00
Congestion studies (Reporting).	162	1	162	300 hrs., $21,900.00	48,600 hrs., $3,547,800.00 ...	21,900.00
Attestation of network resource commitment (Reporting).	162	1	162	1 hr., $73.00	162 hrs., $11,826.00	73.00
Capacity reassignment (Reporting).	162	1	162	100 hrs., $7,300.00	16,200 hrs., $1,182,600.00 ...	7,300.00
Operational Penalty annual filing (Record Keeping) [8].	162	1	162	10 hrs., $358.30	1,620 hrs., $58,044.60	358.30
Creditworthiness—include criteria in the tariff (Reporting) [9].	0	0	0	0	0	0
FERC–917, Sub-Total of Record Keeping Requirements.					1,620 hrs., $58,044.60	
FERC–917, Sub-Total of Reporting Requirements.					82,307 hrs., $6,008,411.00 ...	

[3] NAESB is the North American Energy Standards Board.

[4] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR part 1320.

FERC–917 (ELECTRIC TRANSMISSION FACILITIES) AND FERC–918 (STANDARDS FOR BUSINESS PRACTICES AND COMMUNICATION PROTOCOLS FOR PUBLIC UTILITIES)—Continued

	Number of respondents	Annual number of responses per respondent	Annual number of responses	Average annual burden hrs. & cost [5] per response ($)	Total average annual burden hours & total annual cost [6] ($)	Average annual cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) = (6)
FERC–917—Sub Total of Reporting and Recordkeeping Requirements.	.....	.....	.....	.....	83,927 hrs., $6,066,455.60 ...	.....
18 CFR 37.6 & 37.7 (FERC–918)						
Implementation by each utility [9] (Reporting) [10].	0	0	0	0	0	0
NERC/NAESB Team to develop [9] (Reporting).	0	0	0	0	0	0
Review and comment by utility [9] (Reporting).	0	0	0	0	0	0
Mandatory data exchanges (Reporting).	162	1	162	80 hrs., $5,840.00	12,960 hrs., $946,080.00	5,840.00
Explanation of change of ATC values (Reporting).	162	1	162	100 hrs., $7,300.00	16,200 hrs., $1,182,600.00 ...	7,300.00
Reevaluate CBM and post quarterly (Record Keeping).	162	1	162	20 hrs., $716.60	3,240 hrs., $116,089.20	716.60
Post OASIS metrics; requests accepted/denied (Reporting).	162	1	162	90 hrs., $6,570.00	14,580 hrs., $1,064,340.00 ...	6,570.00
Post planning redispatch offers and reliability redispatch data (Record Keeping).	162	1	162	20 hrs., $716.60	3,240 hrs., $116,089.20	716.60
Post curtailment data (Reporting).	162	1	162	1 hr., $73.00	162 hrs., $11,826.00	73.00
Post Planning and System Impact Studies (Reporting).	162	1	162	5 hrs., $365.00	810 hrs., $59,130.00	365.00
Posting of metrics for System Impact Studies (Reporting).	162	1	162	100 hrs., $7,300.00	16,200 hrs., $1,182,600.00 ...	7,300.00
Post all rules to OASIS (Record Keeping).	162	1	162	5 hrs., $179.15	810 hrs., $29,022.30	179.15
FERC–918, Sub-Total of Record Keeping Requirements.	.....	.....	.....	.....	7,290 hrs., $261,200.70	.....
FERC–918 Sub-Total of Reporting Requirements.	.....	.....	.....	.....	60,912 hrs., $4,446,576.00 ...	.....
FERC–918—Sub Total of Reporting and Recordkeeping Requirements.	.....	.....	.....	.....	68,202 hrs., $4,707,776.70 ...	.....
Total FERC–917 and FERC–918 (Reporting and Recordkeeping Requirements).	.....	.....	.....	.....	152,129 hrs., $10,774,232.30	.....

[5] The estimated hourly cost (salary plus benefits) provided in this section is based on the salary figures for March 2021 posted by the Bureau of Labor Statistics for the Utilities sector and benefits based on BLS report; issued June 17, 2021 Employer Costs for Employee Compensation Summary (available at *https://www.bls.gov/news.release/ecec.nr0.htm*). The hourly rates are displayed below:

Legal (Occupation Code: 23–0000): $142.25

Management Analyst (Occupation Code: 13–1111): $68.39

Office and Administrative Support (Occupation Code: 43–000): $44.47

Electrical Engineer (Occupation Code: 17–2071): $72.15

Information Security Analyst (Occupation Code: 15–1122): $73.57

File Clerk (Occupation Code: 43–4071): $35.83

The skill sets are assumed to contribute equally, so the hourly cost is an average [($142.25 + $68.39 + $44.47 + $72.15 + $73.57 + 35.83) ÷ 6 = $72.78]. The figure is rounded to $73.00 per hour.

[6] The last renewal of FERC–917/918 (ICR Ref. No. 201802–1902–002) included a $7,400,000 cost for off-site storage facility for recordkeeping. This cost was not related to burden hours, rather an annual estimate of the fees related to offsite storage. This cost has been removed as all recordkeeping is retained electronically per 18 CFR 37.7(b), which states: ''Audit data must remain available for download on the OASIS for 90 days, except ATC/TTC postings that must remain available for download on the OASIS for 20 days. The audit data are to be retained and made available upon request for download for five years from the date when they are first posted in the same electronic form as used when they originally were posted on the OASIS.''

[7] The increase in the number of responses from 134 (from OMB's currently approved inventory for FERC–917/918) to 162 is based on the increased number of companies subject to compliance and

Comments: Comments are invited on: (1) Whether the collections 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 collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: September 9, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–19903 Filed 9–14–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5596–020]

Town of Bedford, Virginia; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 5596–020.

c. *Date filed:* April 30, 2021.

d. *Applicant:* Town of Bedford, Virginia.

e. *Name of Project:* Bedford Hydroelectric Project.

f. *Location:* On the James River in the town of Bedford in Bedford and Amherst counties, Virginia. The project does not affect federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* M. Scott Salmon, Electric Systems Engineer, Town of Bedford Electric Department, 877 Monroe Street, Bedford, Virginia 24523; (540) 587–6079 or *msalmon@bedfordva.gov.*

i. *FERC Contact:* Andy Bernick at (202) 502–8660, or *andrew.bernick@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Bedford Hydroelectric Project (P–5596–020).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted but is not ready for environmental analysis.

l. The current license for the Bedford Hydroelectric Project (Bedford Project) authorizes the following project facilities: (1) A 9- to 17-foot-high concrete gravity dam with a 1,680-foot-long concrete spillway; (2) a 57-acre impoundment with a storage capacity of 350 acre-feet at the normal maximum water surface elevation of 628.0 feet above mean sea level; (3) a 1,200-foot-long, 180-foot-wide, 16-foot-deep power canal; (4) a power canal headgate composed of three 21.6-foot-wide, 15.9-foot-high steel gates; (5) a 49.1-foot-wide, 29.02-foot-high steel trashrack with a clear bar spacing of 3.5-inches; (6) a 55-foot-long, 80-foot-wide powerhouse; (7) a 65-foot-long, 120-foot-wide tailrace; (8) two 2.5-megawatt (MW) turbine-generator units with a total capacity of 5.0 MW; (9) a 110-foot-long, 2.4-kilovolt (kV) generator lead, and a 180-foot-long, 4.16-kV generator lead; (10) two 2.4/22.9-kV, 0.600-megavolt-ampere (MVA) three-phase step-up transformers, and two 4.16/22.9-kV, 3.75 MVA three-phase step-up transformers; (11) a 2,800-foot-long, 33.9-kilovolt primary transmission line; and (12) appurtenant facilities.

The Town of Bedford's proposed project facilities would revise the project's electrical infrastructure to include a 4.0-kilovolt, 120-foot-long underground transmission line from the powerhouse to the project substation; and two 3.75-megavolt-ampere step-up transformers. In addition, the Town of Bedford proposes to remove the 2,800-foot-long transmission line as it is no longer the project's primary transmission line.

The Bedford Project is operated in run-of-river mode. The average annual generation is estimated to be 1,114.75 megawatt-hours.

m. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested individuals an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*www.ferc.gov*) using the ''eLibrary'' link. At this time, the Commission has suspended access to the Commission's Public Access Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the

changes in the last few years as identified by the NERC registry.

[8] While we are using the average hourly rate for the majority of the calculations, all recordkeeping tasks are solely completed by a file clerk at $35.83/hour.

[9] As noted, the zeroes for respondents and responses in the table are based on having no filings of this type over the past four years.

[10] ATC-related standards include: Implementation by each utility (Reporting), NERC/NAESB Team to develop (Reporting), and Review and comment by utility (Reporting).

applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Issue Scoping Document 1 for comments—January 2022
Request Additional Information (if necessary)—February 2022
Issue Scoping Document 2 (if necessary)—March 2022
Issue Notice of Ready for Environmental Analysis—October 2022

Dated: September 9, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–19899 Filed 9–14–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2514–205]

Appalachian Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Request for a temporary amendment of the reservoir elevation requirement at the Byllesby development.

b. *Project No.:* 2514–205.

c. *Date Filed:* September 3, 2021.

d. *Applicant:* Appalachian Power Company.

e. *Name of Project:* Byllesby and Buck Hydroelectric Project.

f. *Location:* The project is located on the New River in Carroll County, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Edward S. Brennan, Plant Environmental Coordinator Principal, Appalachian Power, P.O. Box 2021, Roanoke, VA 24022, (540) 985–2984.

i. *FERC Contact:* Mr. Steven Sachs, (202) 502–8666, *Steven.Sachs@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance of this notice by the Commission. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/doc-sfiling/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include docket number P–2514–205.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant intends to draw down the reservoir at the Byllesby development to 2,071 feet National Geodetic Vertical Datum, approximately 7 feet below the normal minimum reservoir elevation, to allow for intake screen repairs. The applicant plans to begin the drawdown on October 15, 2021, and to return the reservoir to the normal elevation by December 31, 2021. The applicant would close the Byllesby public boat access and the Byllesby portage during the duration of the drawdown, and would notify the public of these closings via local media and signage.

l. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Motions to Intervene, or Protests:* Anyone may submit comments, a motion to intervene, or a protest in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, motions to intervene, or protests must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''MOTION TO INTERVENE'', or ''PROTEST'' as applicable; (2) set forth in the heading the name of the applicant and the project number(s) of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person intervening or protesting; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: September 9, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–19902 Filed 9–14–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC21–131–000.
Applicants: Sierra Pacific Power Company, Apple Inc.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Sierra Pacific Power Company, et al.
Filed Date: 9/8/21.
Accession Number: 20210908–5144.
Comment Date: 5 p.m. ET 9/29/21.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21–244–000.
Applicants: Entergy Services, LLC, AR Searcy Project Company, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of AR Searcy Project Company, LLC.
Filed Date: 9/7/21.
Accession Number: 20210907–5218.
Comment Date: 5 p.m. ET 9/28/21.
Docket Numbers: EG21–245–000.
Applicants: RWE Renewables Americas, LLC, El Algodon Alto Wind Farm, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of El Algodon Alto Wind Farm, LLC.
Filed Date: 9/9/21.
Accession Number: 20210909–5114.
Comment Date: 5 p.m. ET 9/30/21.
Docket Numbers: EG21–246–000.
Applicants: RWE Renewables Americas, LLC, Blackjack Creek Wind Farm, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Blackjack Creek Wind Farm, LLC.
Filed Date: 9/9/21.
Accession Number: 20210909–5117.
Comment Date: 5 p.m. ET 9/30/21.
Docket Numbers: EG21–247–000.
Applicants: RWE Renewables Americas, LLC, Big Star Solar, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Big Star Solar, LLC.
Filed Date: 9/9/21.
Accession Number: 20210909–5125.
Comment Date: 5 p.m. ET 9/30/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–1635–002.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Compliance Filing re Black Start Revisions to Tariff, Schedule 6A to be effective 6/6/2021.
Filed Date: 9/9/21.
Accession Number: 20210909–5097.
Comment Date: 5 p.m. ET 9/30/21.
Docket Numbers: ER21–2557–000.
Applicants: Aron Energy Prepay 5 LLC.
Description: Supplement to July 29, 2021 Aron Energy Prepay 5 LLC tariff filing.
Filed Date: 9/7/21.
Accession Number: 20210907–5215.
Comment Date: 5 p.m. ET 9/28/21.
Docket Numbers: ER21–2712–000.
Applicants: Heartland Generation Ltd.
Description: Supplement to August 19, 2021 Heartland Generation Ltd. tariff filing.
Filed Date: 9/8/21.
Accession Number: 20210908–5143.
Comment Date: 5 p.m. ET 9/29/21.
Docket Numbers: ER21–2856–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement 6167; Queue No. AE1–101 to be effective 8/11/2021.
Filed Date: 9/9/21.
Accession Number: 20210909–5038.
Comment Date: 5 p.m. ET 9/30/21.
Docket Numbers: ER21–2857–000.
Applicants: Dominion Energy South Carolina, Inc.
Description: § 205(d) Rate Filing: SCPSA IA Amendment to be effective 11/19/2021.
Filed Date: 9/9/21.
Accession Number: 20210909–5061.
Comment Date: 5 p.m. ET 9/30/21.
Docket Numbers: ER21–2858–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: CRA, SA No. 6161; Non-Queue No. NQ–170 to be effective 8/11/2021.
Filed Date: 9/9/21.
Accession Number: 20210909–5075.
Comment Date: 5 p.m. ET 9/30/21.
Docket Numbers: ER21–2859–000.
Applicants: Alabama Power Company.
Description: Tariff Amendment: Brother Solar LGIA Termination Filing to be effective 9/9/2021.
Filed Date: 9/9/21.
Accession Number: 20210909–5083.
Comment Date: 5 p.m. ET 9/30/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 9, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–19887 Filed 9–14–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2021–0567; FRL–8913–01–OCSPP]

Ortho-Phthalaldehyde; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the National Aeronautics and Space Administration (NASA) to use the pesticide ortho-phthalaldehyde (OPA, CAS No. 643–79–8) to treat the coolant fluid of the internal active thermal control system of the International Space Station to control aerobic/microaerophilic bacteria in the aqueous coolant. The applicant proposes the use of a new chemical which has not been registered by EPA. Therefore, in accordance with the Code of Federal Regulations, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before September 30, 2021.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2021–0567, 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 Confidential Business Information (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.*

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: In accordance with the regulations at 40 CFR 166.24(a)(1), EPA is soliciting public comment before making the decision to grant the exemption.

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are a pesticide manufacturer (North American Industrial Classification System (NAICS) (Code 32532) or involved with the International Space Station. This listing is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Other types of entities not listed could also be affected.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. NASA has requested the EPA Administrator to issue a specific exemption for the use of ortho-phthalaldehyde (OPA) in the coolant of the internal active thermal control system (IATCS) of the International Space Station (ISS) to control aerobic/microaerophilic bacteria in the aqueous coolant. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant stated that it has considered the registered biocide alternatives and has concluded that OPA is the most effective biocide which meets the requisite criteria including: The need for safe, non-intrusive implementation and operation in a functioning system; the ability to control existing planktonic and biofilm-residing micro-organisms; a negligible impact on system-wetted materials of construction; and a negligible reactivity with existing coolant additives. The ISS would not have an adequate long-term solution for controlling the micro-organisms in the IATCS coolant without the use of OPA. The OPA is incorporated into a porous resin material contained in a stainless-steel canister. The canister containing the OPA-incorporated resin is inserted into a coolant system loop, using flexible hose and quick disconnects, and is placed in lime for 8 hours to deliver the OPA into the fluid. As the coolant fluid flows through the canister, the OPA elutes from the resin material into the coolant fluid. The total volume of the circulatory loops of the IATCS is 829 liters. The maximum concentration would be 500 milligrams (mg) of OPA per liter of coolant fluid. A total of 414, 500 mg of OPA would be needed for the entire system. The OPA is incorporated into the resin at 210 mg OPA per cm^3 resin, resulting in a potential total use of 1,974 cm^3 of the OPA-containing resin. The level of OPA in the coolant is monitored periodically, and because OPA degrades over time, the concentration decreases to a level that is no longer effective in about 1 to 2 years. At this point, replenishment with new OPA-containing canisters is required. EPA has authorized similar emergency exemptions for this use since 2011. With the decision to extend the mission of the ISS to 2024, the need for this use is expected to continue for the duration.

This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 require publication of a notice of receipt of an application for a specific exemption proposing the use of a new chemical (*i.e.,* an active ingredient), which has not been registered by EPA. The notice provides an opportunity for public comment on the application.

The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the NASA.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 3, 2021.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2021–19911 Filed 9–14–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[8982–01–OA]

Notice of Meeting of the EPA Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protect ion Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act,

notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held virtually November 2 and 3, 2021. The CHPAC advises the Environmental Protection Agency (EPA) on science, regulations and other issues relating to children's environmental health.

DATES: November 2, 2021 from 12:30 p.m. to 6 p.m. and November 3, 2021 from 12:30 p.m. to 6 p.m.

ADDRESSES: The meeting will take place virtually. If you want to listen to the meeting or provide comments, please email *louie.nica@epa.gov* for further details.

FOR FURTHER INFORMATION CONTACT: Nica Louie, Office of Children's Health Protection, U.S. EPA, MC 1107T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 564–7633 or *louie.nica@epa.gov.*

SUPPLEMENTARY INFORMATION: The meetings of the CHPAC are open to the public. An agenda will be posted to *https://www.epa.gov/children/childrens-health-protection-advisory-committee-chpac.*

Access and Accommodations: For information on access or services for individuals with disabilities, please contact Nica Louie at 202–564–7633 or *louie.nica@epa.gov.*

Dated: September 9, 2021.

Nica Mostaghim,

Environmental Health Scientist.

[FR Doc. 2021–19833 Filed 9–14–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreement 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 agreement 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.: 201372.

Agreement Name: Liberty/Wallenius Wilhelmsen Ocean/Eukor Car Carriers Space Charter Agreement.

Parties: Eukor Car Carriers, Inc.; Liberty Global Logistics LLC; And Wallenius Wilhelmsen Ocean AS.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The agreement would authorize the parties to charter space to/from one another on an ''as needed/as available'' basis in all trades in the foreign commerce of the United States.

Proposed Effective Date: 10/22/2021.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/50508.

Dated: September 10, 2021.

Rachel E. Dickon,

Secretary.

[FR Doc. 2021–19922 Filed 9–14–21; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') requests that the Office of Management and Budget (''OMB'') extend for three years the current Paperwork Reduction Act (''PRA'') clearances for information collection requirements contained in four consumer financial regulations enforced by the Commission. Those clearances expire on September 30, 2021.

DATES: Comments must be filed by October 15, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Carole Reynolds or Stephanie Rosenthal, Attorneys, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington, DC 20580, (202) 326–3224.

SUPPLEMENTARY INFORMATION: The four regulations covered by this notice are:

(1) Regulations promulgated under the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* (''ECOA'') (''Regulation B'') (OMB Control Number: 3084–0087);

(2) Regulations promulgated under the Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.* (''EFTA'') (''Regulation E'') (OMB Control Number: 3084–0085);

(3) Regulations promulgated under the Consumer Leasing Act, 15 U.S.C. 1667 *et seq.* (''CLA'') (''Regulation M'') (OMB Control Number: 3084–0086); and

(4) Regulations promulgated under the Truth-In-Lending Act, 15 U.S.C. 1601 *et seq.* (''TILA'') (''Regulation Z'') (OMB Control Number: 3084–0088).

Type of Review: Extension without change of currently approved collection.

Affected Public: Private Sector: Businesses and other for-profit entities.

Abstract: Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), Public Law 111–203, 124 Stat. 1376 (2010), almost all rulemaking authority for the ECOA, EFTA, CLA, and TILA transferred from the Board of Governors of the Federal Reserve System (''Board'') to the Consumer Financial Protection Bureau (''CFPB'') on July 21, 2011 (''transfer date''). To implement this transferred authority, the CFPB published new regulations in 12 CFR part 1002 (Regulation B), 12 CFR part 1005 (Regulation E), 12 CFR part 1013 (Regulation M), and 12 CFR part 1026 (Regulation Z) for those entities under its rulemaking jurisdiction.[1] Although the Dodd-Frank Act transferred most rulemaking authority under ECOA, EFTA, CLA, and TILA to the CFPB, the Board retained rulemaking authority for certain motor vehicle dealers[2] under all of these statutes and also for certain interchange-related requirements under EFTA.[3]

As a result of the Dodd-Frank Act, the FTC and the CFPB generally share the authority to enforce Regulations B, E, M, and Z for entities for which the FTC had enforcement authority before the Act, except for certain motor vehicle dealers.[4] Because of this shared

[1] 12 CFR pt. 1002 (Reg. B) (81 FR 25323, Apr. 28, 2016); 12 CFR pt. 1005 (Reg. E) (81 FR 25323, Apr. 28, 2016); 12 CFR pt. 1013 (Reg. M) (81 FR 25323, Apr. 28, 2016); 12 CFR pt. 1026 (Reg. Z) (81 FR 25323, Apr. 28, 2016).

[2] Generally, these are dealers ''predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.'' *See* Dodd-Frank Act, § 1029(a), (c), 12 U.S.C. 5519(a), (c).

[3] *See* Dodd-Frank Act, § 1075, 15 U.S.C. 1693 (these requirements are implemented through Board Regulation II, 12 CFR pt. 235, rather than EFTA's implementing Regulation E).

[4] The FTC's enforcement authority includes state-chartered credit unions; other federal agencies also have various enforcement authority over credit unions. For example, for large credit unions (exceeding $10 billion in assets), the CFPB has certain authority. The National Credit Union

Continued

enforcement jurisdiction, the two agencies have divided the FTC's previously-cleared PRA burden estimates between them,[5] except that the FTC has assumed all of the burden estimates associated with motor vehicle dealers [6] and state-chartered credit unions. The division of PRA burden hours not attributable to motor vehicle dealers and state-chartered credit unions is reflected in the CFPB's PRA clearance requests to OMB, as well as in the FTC's burden estimates below.

Pursuant to the Dodd-Frank Act, the FTC generally has sole authority to enforce Regulations B, E, M, and Z regarding certain motor vehicle dealers predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both, that, among other things, assign their contracts to unaffiliated third parties.[7] Because the FTC has exclusive jurisdiction to enforce these rules for such motor vehicle dealers and retains its concurrent authority with the CFPB for other types of motor vehicle dealers, and in view of the different types of motor vehicle dealers, the FTC retains the entire PRA burden for motor vehicle dealers in the burden estimates below.

1. Regulation B

The ECOA prohibits discrimination in the extension of credit. Regulation B implements the ECOA, establishing disclosure requirements to assist customers in understanding their rights under the ECOA and recordkeeping requirements to assist agencies in enforcement. Regulation B applies to retailers, mortgage lenders, mortgage brokers, finance companies, and others.

Estimated Annual Burden Hours: 1,797,798 hours (Total).
Recordkeeping: 708,886 hours.
Disclosures: 1,088,912 hours.
Estimated Annual Labor Costs: $65,320,576 (Total).
Recordkeeping: $15,666,176.
Disclosures: $49,654,400.
Estimated Annual Non-Labor Costs: $0.

2. Regulation E

The EFTA requires that covered entities provide consumers with accurate disclosure of the costs, terms, and rights relating to EFT and certain other services. Regulation E implements the EFTA, establishing disclosure and other requirements to aid consumers and recordkeeping requirements to assist agencies with enforcement. It applies to financial institutions, retailers, gift card issuers and others that provide gift cards, service providers, various federal and state agencies offering EFTs, prepaid account entities, and others.

Estimated Annual Burden Hours: Total: 7,435,956 hours.
Recordkeeping: 251,053 hours.
Disclosures: 7,184,903 hours.
Estimated Annual Labor Costs: $332,803,360 (Total).
Recordkeeping: $5,171,684.
Disclosures: $327,631,676.
Estimated Annual Non-Labor Costs: $0.

3. Regulation M

The CLA requires that covered entities provide consumers with accurate disclosure of the costs and terms of leases. Regulation M implements the CLA, establishing disclosure requirements to help consumers comparison shop and understand the terms of leases and recordkeeping requirements. It applies to vehicle lessors (such as auto dealers, independent leasing companies, and manufacturers' captive finance companies), computer lessors (such as computer dealers and other retailers), furniture lessors, various electronic commerce lessors, diverse types of lease advertisers, and others.

Estimated Annual Burden Hours: 101,953 hours (Total).
Recordkeeping: 30,203 hours.
Disclosures: 71,750 hours.
Estimated Annual Labor Costs: $5,954,060 (Total).
Recordkeeping: $1,763,860.
Disclosures: $4,190,200.
Estimated Annual Non-Labor Costs: $0.

4. Regulation Z

The TILA was enacted to foster comparison credit shopping and informed credit decisionmaking by requiring creditors and others to provide accurate disclosures regarding the costs and terms of credit to consumers. Regulation Z implements the TILA, establishing disclosure requirements to assist consumers and recordkeeping requirements to assist agencies with enforcement. These requirements pertain to open-end and closed-end credit and apply to various types of entities, including mortgage companies; finance companies; auto dealerships; private education loan companies; merchants who extend credit for goods or services; credit advertisers; acquirers of mortgages; and others. Additional requirements also exist in the mortgage area, including for high cost mortgages, higher-priced mortgage loans,[8] ability to pay of mortgage consumers, mortgage servicing, loan originators, and certain integrated mortgage disclosures.

Estimated Annual Burden Hours: 8,416,441 (Total).
Recordkeeping: 561,866 hours.
Disclosures: 7,854,575 hours.
Estimated Annual Labor Costs: $369,744,078 (Total).
Recordkeeping: $11,574,450.
Disclosures: $358,169,628.
Estimated Annual Non-Labor Costs: $0.

Request for Comment: On May 17, 2021, the Commission sought comment on the information collection requirements associated with Regulations B, E, M, and Z. 86 FR 26,725 (May 17, 2021). No relevant comments were received. Pursuant to the OMB regulations, 5 CFR part 1320, the FTC is providing this second opportunity for public comment while seeking OMB approval to renew clearance for the Rule's information collection requirements.

Your comment—including your name and your state—will be placed on the public record of this proceeding.

Administration also has certain authority for state-chartered federally insured credit unions, and it additionally provides insurance for certain state-chartered credit unions through the National Credit Union Share Insurance Fund and examines credit unions for various purposes. There are approximately three state-chartered credit unions exceeding $10 billion in assets, and the CFPB assumes PRA burden for those entities. As of the fourth quarter of 2020, there were approximately 2,126 state-chartered credit unions—1,914 which were federally insured, an estimated 112 or more which were privately insured, and an estimated 100 or more in Puerto Rico which were insured by a quasi-governmental entity. Because of the difficulty in parsing out PRA burden for such entities in view of the overlapping authority, the FTC's figures include PRA burden for all state-chartered credit unions. However, in view of fluctuations due to COVID–19 and to avoid undercounting, we have retained the prior estimate of 2,300 state-chartered credit unions. As noted above, the CFPB's figures as to state-chartered credit unions include burden for those entities exceeding $10 billion in assets. *See generally* Dodd-Frank Act, §§ 1061, 1025, 1026. This attribution does not change actual enforcement authority.

[5] The CFPB also factors into its burden estimates respondents over which it has jurisdiction but the FTC does not.

[6] *See* Dodd-Frank Act § 1029, 12 U.S.C. 5519(a), as to motor vehicle dealers, as limited by subsection (b). Subsection (b) does not preclude CFPB regulatory oversight regarding, among others, businesses that extend retail credit or retail leases for motor vehicles in which the credit or lease offered is provided directly from those businesses, rather than unaffiliated third parties, to consumers. It is not practicable, however, for PRA purposes, to estimate the portion of dealers that engage in one form of financing versus another (and that would or would not be subject to CFPB oversight). Thus, FTC staff's PRA burden analysis reflects a general estimated volume of motor vehicle dealers. This attribution does not change actual enforcement authority.

[7] *See* Dodd-Frank Act, § 1029, 12 U.S.C. 5519(a), (c).

[8] While Regulation Z also requires the creditor to provide a short written disclosure regarding the appraisal process for higher-priced mortgage loans, the disclosure is provided by the CFPB. As a result, it is not a ''collection of information'' for PRA purposes (*see* 5 CFR 1320.3(c)(2)).

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential'' as provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns devices, manufacturing processes, or customer names.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2021–19904 Filed 9–14–21; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–MA–2021–04; Docket No. 2021–0002; Sequence No. 23]

Federal Travel Regulation (FTR); Relocation Allowances—Waiver of Certain Provisions of the FTR Chapter 302 for Official Relocation Travel to Locations in Mississippi, Louisiana, New York, and New Jersey Impacted by Hurricane Ida

AGENCY: Office of Government-Wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice of GSA Bulletin FTR 22–02, Waiver of certain Federal Travel Regulation (FTR) provisions for official relocation travel to locations in Mississippi, Louisiana, New York, and New Jersey impacted by Hurricane Ida.

SUMMARY: GSA Bulletin FTR 22–02 informs Federal agencies that certain provisions of the FTR governing official relocation travel are temporarily waived for Mississippi, Louisiana, New York, and New Jersey locations impacted by Hurricane Ida. As a result of the storm damage caused by Hurricane Ida, agencies should consider delaying all non-essential relocations to the affected areas given the statutory 120-day maximum for Temporary Quarters Subsistence Expenses (TQSE). Due to the lasting effects of the storm damage to these affected areas, finding lodging facilities and/or adequate meals may be difficult, and distance involved may be great, resulting in increased cost for relocation per diem expenses.

DATES: *Applicability Date:* This notice is retroactively effective for official relocation travel performed on or after (a) August 28, 2021, the date of the Presidential Disaster Declaration EM–3569–MS, to locations in Mississippi, (b) August 29, 2021, the date of the Presidential Disaster Declaration DR–4611–LA, to the locations in Louisiana, (c) September 1, 2021, the date of the Presidential Disaster Declaration EM–3572–NY, to the locations in New York, and (d) September 1, 2021, the date of the Presidential Disaster Declaration EM–3573–NJ, to the locations in New Jersey, impacted by Hurricane Ida. The FTR Bulletin expires 180 days from the respective effective dates, unless extended or rescinded by this office.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Miller, Senior Policy Analyst, Office of Government-wide Policy, Office of Asset and Transportation Management, at 202–501–3822 or *travelpolicy@gsa.gov*. Please cite Notice of GSA Bulletin FTR 22–02.

SUPPLEMENTARY INFORMATION:

Background

Federal agencies authorize relocation entitlements to those individuals listed at FTR § 302–1.1 and those assigned under the Government Employees Training Act (GETA) (5 U.S.C. Chapter 41) which must be used within one-year. Some agencies will authorize TQSE and a Househunting trip (HHT) to assist employees with temporary expenses when relocating to the new duty station. The FTR limits the location of where temporary lodging may occur, how long they may receive assistance, and at what per diem rate expenses are based. Hurricane Ida has affected locations in Mississippi, Louisiana, New York, and New Jersey which has resulted in various travel-related disruptions to relocating employees. Accordingly, this GSA Bulletin allows agencies to determine whether to implement waivers of time limits established by the FTR for completion of all aspects of relocation, temporary quarter's locations at the new duty station and per diem rates for TQSE, and per diem rates for HHTs.

GSA Bulletin FTR 22–02 can be viewed at *https://www.gsa.gov/ftrbulletins.*

Krystal J. Brumfield,

Associate Administrator, Office of Government-Wide Policy.

[FR Doc. 2021–19941 Filed 9–14–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Performance Review Board Members

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) located within the Department of Health and Human Services (HHS) announces the names of the Performance Review Board Members who are reviewing performance of Senior Executive Service (SES) members, Title 42 (T42) executives, and Senior Level (SL) employees for Fiscal Year 2021.

FOR FURTHER INFORMATION CONTACT: Henry Greene, Team Chief, Executive and Scientific Resources Office, Human Resources Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS US11–2, Atlanta, Georgia 30329–4027. Telephone (770) 488–1140.

SUPPLEMENTARY INFORMATION: Title 5, U.S.C. 4314(c)(4) of the Civil Service Reform Act of 1978, Public Law 95–454, requires that the appointment of Performance Review Board Members be published in the **Federal Register**. The following persons will serve on the CDC Performance Review Board, which will oversee the evaluation of performance appraisals of Senior Executive Service members for the Fiscal Year 2021 review period:

Bornstein, Joshua, Co-Chair
Dean, Hazel, Co-Chair
Bonander, Jason
Dulin, Stephanie
Ethier, Kathleen
Kitt, Margaret
Kosmos, Christine
Peeples, Amy
Perry, Terrance
Pirkle, James
Wharton, Melinda

Dated: September 10, 2021.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2021–19907 Filed 9–14–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0294]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food Contact Substance Notification Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection associated with the Food Contact Substance Notification Program.

DATES: Submit either electronic or written comments on the collection of information by November 15, 2021.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before November 15, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 15, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2012–N–0294 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Food Contact Substance Notification Program.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the

collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Food Contact Substance Notification Program—21 CFR 170.101, 170.106, and 171.1

OMB Control Number 0910–0495—Extension

This information collection supports FDA regulations regarding Food Contact Substance Notification, as well as associated guidance and accompanying forms. Section 409(h) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 348(h)) establishes a premarket notification process for food contact substances. Section 409(h)(6) of the FD&C Act defines a ''food contact substance'' as ''any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food.'' Section 409(h)(3) of the FD&C Act requires that the notification process be used for authorizing the marketing of food contact substances except when: (1) We determine that the submission and premarket review of a food additive petition (FAP) under section 409(b) of the FD&C Act is necessary to provide adequate assurance of safety or (2) we and the manufacturer or supplier agree that an FAP should be submitted. Section 409(h)(1) of the FD&C Act requires that a notification include: (1) Information on the identity and the intended use of the food contact substance and (2) the basis for the manufacturer's or supplier's determination that the food contact substance is safe under the intended conditions of use.

Sections 170.101 and 170.106 of FDA's regulations (21 CFR 170.101 and 170.106) specify the information that a notification must contain and require that: (1) A food contact substance notification (FCN) includes Form FDA 3480 and (2) a notification for a food contact substance formulation includes Form FDA 3479. These forms serve to summarize pertinent information in the notification. The forms facilitate both preparation and review of notifications because the forms will serve to organize information necessary to support the safety of the use of the food contact substance. The burden of filling out the appropriate form has been included in the burden estimate for the notification.

Currently, interested persons transmit an FCN submission to the Office of Food Additive Safety in the Center for Food Safety and Applied Nutrition using Form FDA 3480 whether it is submitted in electronic or paper format. We estimate that the amount of time for respondents to complete Form FDA 3480 will continue to be the same.

In addition to its required use with FCNs, Form FDA 3480 is recommended to be used to organize information within a Pre-notification Consultation or Master File submitted in support of an FCN according to the items listed on the form. Master Files can be used as repositories for information that can be referenced in multiple submissions to FDA, thus minimizing paperwork burden for food contact substance authorizations. We estimate that the amount of time for respondents to complete the Form FDA 3480 for these types of submissions is 0.5 hours.

FDA recommends using Form FDA 3480A for each submission of additional information (*i.e.,* amendment) to an FCN submission of Pre-notification Consultation currently under Agency review, as well as for Master Files. Form FDA 3480A helps the respondent organize the submission to focus on the information needed for FDA's safety review. We estimate that the amount of time for respondents to complete the Form FDA 3480A for these types of submissions is 0.5 hours.

FDA's guidance documents entitled: (1) ''Preparation of Food Contact Notifications: Administrative,'' (2) ''Preparation of Food Contact Notifications and Food Additive Petitions for Food Contact Substances: Chemistry Recommendations,'' and (3) ''Preparation of Food Contact Notifications for Food Contact Substances: Toxicology Recommendations'' provide assistance to industry regarding the preparation of an FCN and a petition for food contact substances (FCSs). FDA also issued a guidance entitled, ''Preparation of Food Contact Notifications for Food Contact Substances in Contact with Infant Formula and/or Human Milk.'' The guidance provides assistance to industry regarding the preparation of an FCN for FDA review and evaluation of the safety of FCSs used in contact with infant formula and/or human milk. These guidances are available at *https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/IngredientsAdditivesGRASPackaging/default.htm.*

Section 171.1 of FDA's regulations (21 CFR 171.1) specifies the information that a petitioner must submit in order to: (1) Establish that the proposed use of an indirect food additive is safe and (2) secure the publication of an indirect food additive regulation in parts 175 through 178 (21 CFR parts 175 through 178). Parts 175 through 178 describe the conditions under which the additive may be safely used.

In addition, FDA's guidance entitled ''Use of Recycled Plastics in Food Packaging: Chemistry Considerations,'' provides assistance to manufacturers of food packaging in evaluating processes for producing packaging from post-consumer recycled plastic. The recommendations in the guidance address the process by which manufacturers certify to FDA that their plastic products are safe for food contact.

Description of Respondents: The respondents to this information collection are manufacturers of food contact substances sold in the United States. Respondents are from the private sector.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section; activity	Form FDA No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
170.106 [2] (Category A)	3479	10	2	20	2	40
170.101 [3 7] (Category B)	3480	6	1	6	25	150
170.101 [4 7] (Category C)	3480	6	2	12	120	1,440
170.101 [5 7] (Category D)	3480	42	2	84	150	12,600
170.101 [6 7] (Category E)	3480	38	1	38	150	5,700
Pre-notification Consultation or Master File (concerning a food contact substance) [8].	3480	150	1	150	0.5 (30 minutes)	75

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

21 CFR section; activity	Form FDA No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Amendment to an existing notification (170.101), amendment to a Pre-notification Consultation, or amendment to a Master File (concerning a food contact substance) [9].	3480A	80	1	80	0.5 (30 minutes)	40
171.1; Indirect Food Additive Petitions	N/A	1	1	1	10,995	10,995
Use of Recycled Plastics in Food Packaging: Chemistry Considerations.	N/A	65	1	65	25	1,625
Preparation of Food Contact Notifications for Food Contact Substances in Contact with Infant Formula and/or Human Milk.		2	1	2	5	10
Total						32,675

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Notifications for food contact substance formulations and food contact articles. These notifications require the submission of Form FDA 3479 (''Notification for a Food Contact Substance Formulation'') only.
[3] Duplicate notifications for uses of food contact substances.
[4] Notifications for uses that are the subject of exemptions under 21 CFR 170.39 and very simple food additive petitions.
[5] Notifications for uses that are the subject of moderately complex food additive petitions.
[6] Notifications for uses that are the subject of very complex food additive petitions.
[7] These notifications require the submission of Form FDA 3480.
[8] These notifications recommend the submission of Form FDA 3480.
[9] These notifications recommend the submission of Form FDA 3480A.

Based on a review of the information collection since our last request for OMB approval, we made adjustments to our burden estimate. The estimates are based on our current experience with the Food Contact Substance Notification Program and informal communication with industry.

Our estimated burden for the information collection reflects an overall increase of 1,345 hours and a corresponding decrease of 5 responses. We attribute this adjustment to a decrease in Pre-Notification Consultations or Master Files by 40 responses, a subsequent decrease of amendments to Pre-Notification Consultations or Master Files by 20 responses, and an increase of 55 respondents using the recommendations in the guidance document entitled, ''Use of Recycled Plastics in Food Packaging: Chemistry Considerations.'' As the average burden for preparing recycling submissions is higher than for Pre-notification Consultations or Master Files, this results in an overall increase in total burden even with an overall decrease in responses.

Dated: September 9, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–19925 Filed 9–14–21; 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 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: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Regulation, Learning and Ethology Study Section.

Date: October 7, 2021.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sara Louise Hargrave, Ph.D. Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3170, Bethesda, MD 20892, (301) 443–7193, *hargravesl@mail.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Kidney, Nutrition, Obesity and Diabetes Study Section.

Date: October 7–8, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Steven Michael Frenk, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3141, Bethesda, MD 20892, (301) 480–8665 *frenksm@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; High-end and Shared Instrumentation Grants.

Date: October 12, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, (301) 435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience; Integrated Review Group; Developmental Brain Disorders Study Section.

Date: October 13–15, 2021.

Time: 11:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting)

Contact Person: Pat Manos, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, (301) 408–9866, *manospa@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Maximizing Investigators' Research Award A Study Section.

Date: October 14–15, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Guoqin Yu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1276, *guoqin.yu@nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Glia Study Section.

Date: October 14–15, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sung-Wook Jang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 812P, Bethesda, MD 20892, (301) 435–1042, *jangs2@csr.nih.gov*.

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Cancer Genetics Study Section.

Date: October 14–15, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Juraj Bies, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1256, *biesj@mail.nih.gov*.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Lifestyle Change and Behavioral Health Study Section.

Date: October 14–15, 2021.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ahlishia Jnae Shipley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3222, MSC 7816, Bethesda, MD 20892, (301) 480–8976, *shipleyaj@mail.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel, PAR Panel: Innovative Research in Cancer Nanotechnology.

Date: October 14–15, 2021.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Raj K Krishnaraju, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, Bethesda, MD 20892, (301) 435–1047, *kkrishna@csr.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Chronic Dysfunction and Integrative Neurodegeneration Study Section.

Date: October 14–15, 2021.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bernard Rajeev Srambical Wilfred, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1042, *bernard.srambicalwilfred@nih.gov*.

Name of Committee: Cell Biology Integrated Review Group; Cellular Mechanisms in Aging and Development Study Section.

Date: October 14–15, 2021.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Tami Jo Kingsbury, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 710Q, Bethesda, MD 20892, (410) 274–1352, *tami.kingsbury@nih.gov*.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Social Psychology, Personality and Interpersonal Processes Study Section.

Date: October 18–19, 2021.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Janetta Lun, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 1007E, Bethesda, MD 20892, (301) 435–5877, *janetta.lun@nih.gov*.

Information is also available on the Institute's/Center's home page: *https://public.csr.nih.gov/StudySections/DBIB/GGG,* where an agenda and any additional information for the meeting will be posted when available.

(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: September 10, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–19937 Filed 9–14–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–9: NCI Clinical and Translational Cancer Research.

Date: October 26, 2021.

Time: 11:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W546, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Shannon M. Doyle, Ph.D., Scientific Review Officer, Program Coordination and Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9606 Medical Center Drive, Room 7W546, Rockville, Maryland 20850, 240–760–7836, *doyles@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; R13 Conference Grant Review.

Date: November 18, 2021.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W552, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Jeanette Irene Marketon, Ph.D., Scientific Review Officer, Program Coordination and Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9606 Medical Center Drive,

Room 7W552, Rockville, Maryland 20850, 240–276–6780, *jeanette.marketon@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Pediatric and AYA Cancer Survivors (R01 and R21).

Date: December 1–2, 2021.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W606, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Timothy C. Meeker, M.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W606, Rockville, Maryland 20850, 240–276–6464, *meekert@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; SBIR Phase IIB Bridge Awards.

Date: December 9, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W120, Rockville, Maryland 20850 (Telephone Conference Call).

Contact Person: Majed M. Hamawy, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W120, Rockville, Maryland 20850, 240–276–6457, *mh101v@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 10, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–19882 Filed 9–14–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 Drug Abuse Special Emphasis Panel; NIDA Career Development and Education SEP.

Date: October 20–21, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sindhu Kizhakke Madathil, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–5702, *sindhu.kizhakkemadathil@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: September 9, 2021.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–19873 Filed 9–14–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RFA DK21–005 Immune Cell Engineering for Type 1 Diabetes.

Date: November 15–16, 2021.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Video Meeting).

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7119, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 10, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–19936 Filed 9–14–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Allergy and Infectious Diseases Special Emphasis Panel; Notice of Special Interest (NOSI) on Pan-Coronavirus Vaccine Development Program Projects.

Date: October 6–8, 2021.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G41, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Brenda Lange-Gustafson, Ph.D., Scientific Review Officer, Scientific

Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G41, Rockville, MD 20852, (240) 669–5047, *bgustafson@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 9, 2021.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–19874 Filed 9–14–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Vascular and Hematology Integrated Review Group; Basic Biology of Blood, Heart and Vasculature Study Section.

Date: October 7–8, 2021.

Time: 9:00 a.m. to 9:00 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: Ashlee Lane, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, 301–451–3849, *ashlee.tipton@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Animal and Biological Material Resource Centers and Resource-Related Research Projects.

Date: October 13, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Christopher Payne, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–3702, *christopher.payne@nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Clinical Translational Imaging Science Study Section.

Date: October 14–15, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Eleni Apostolos Liapi, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, 301–867–5309, *eleni.liapi@nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group; Molecular Neurogenetics Study Section.

Date: October 14–15, 2021.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mary G. Schueler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7846, Bethesda, MD 20892, 301–915–6301, *marygs@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Social Sciences and Population Studies B Study Section.

Date: October 14–15, 2021.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kate Fothergill, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3142, Bethesda, MD 20892, 301–435–2309, *fothergillke@mail.nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group; Bioengineering of Neuroscience, Vision and Low Vision Technologies Study Section.

Date: October 14–15, 2021.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Robert C. Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Learning, Memory, Language, Communication, and Related Neuroscience.

Date: October 18–19, 2021.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jyothi Arikkath, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, Bethesda, MD 20892, (301) 435–1042, *arikkathj2@mail.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Membrane Biology and Protein Processing Study Section.

Date: October 18–19, 2021.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kevin Czaplinski, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–480–9139, *czaplinskik2@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Clinical Informatics and Digital Health Study Section.

Date: October 19–20, 2021.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Paul Hewett-Marx, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (240) 672–8946, *hewettmarxpn@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Behavioral Genetics and Epidemiology Study Section.

Date: October 19–20, 2021.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Andrew Louden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3137, Bethesda, MD 20817, 301–435–1985, *loudenan@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Pathobiology of Kidney Disease Study Section.

Date: October 19–20, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Surgical Sciences, Biomedical Imaging and Bioengineering.

Date: October 19, 2021.

Time: 9:30 a.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jan Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, Bethesda, MD 20892, 301.402.9607, *Jan.Li@nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Hemostasis, Thrombosis, Blood Cells and Transfusion Study Section.

Date: October 19–20, 2021.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ai-Ping Zou, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, (301) 408–9497, *zouai@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cellular, Molecular and Integrative Reproduction Study Section.

Date: October 19–20, 2021.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anthony Wing Sang Chan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 809K, Bethesda, MD 20892, (301) 496–9392, *chana2@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function B Study Section.

Date: October 19–20, 2021.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexei A. Yeliseev, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–443–0552, *yeliseeva@mail.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Addiction Risks and Mechanisms Study Section.

Date: October 19–20, 2021.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, (301) 496–0726, *prenticekj@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; The Cellular and Molecular Biology of Complex Brain Disorders.

Date: October 19–20, 2021.

Time: 10:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Adem Can, Ph.D. Scientific Review, Officer, Center for Scientific Review National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7850 Bethesda, MD 20892 (301) 435–1042 *cana2@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Clinical Studies of Mental Illness (Collaborative R01).

Date: October 19, 2021.

Time: 12:00 p.m. to 2:00 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: Andrew Louden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3137, Bethesda, MD 20817, 301–435–1985, *loudenan@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 9, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–19872 Filed 9–14–21; 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; Fellowships in Diabetes Endocrinology and Metabolic Diseases.

Date: October 14–15, 2021.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Video Meeting).

Contact Person: Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7021, 6707 Democracy Boulevard, Bethesda, MD, 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 10, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–19935 Filed 9–14–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7034–N–52; OMB Control No.: 2528–0319]

30-Day Notice of Proposed Information Collection: Evaluation of the HUD–DOJ Pay for Success Permanent Supportive Housing Demonstration

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested

parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* October 15, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on January 25, 2021 at 86 FR 6913.

A. Overview of Information Collection

Title of Information Collection: Evaluation of the HUD–DOJ Pay for Success Permanent Supportive Housing Demonstration.

OMB Approval Number: 2528–0319.

Type of Request: Revision of a currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: The U.S. Departments of Housing and Urban Development (HUD) and Justice (DOJ) entered into an interagency collaboration that combines DOJ's mission to promote safer communities by focusing on the reentry population with HUD's mission to end chronic homelessness. This collaboration resulted in the HUD–DOJ Pay for Success Permanent Supportive Housing Demonstration with $8.68M awarded to seven communities to develop supportive housing for persons cycling between the jail or prison systems and the homeless service systems using pay for success (PFS) as a funding mechanism. HUD announced seven grantees from across the country in June 2016. As of August 2021, six grantee communities remain. The PFS Demonstration grant supports activities throughout the PFS lifecycle, including feasibility analysis, transaction structuring, and outcome evaluation and success payments, with each grantee receiving funds for different stages in the PFS lifecycle. Through the national evaluation, which is funded through an interagency agreement between HUD and DOJ and managed by HUD's Office of Policy Development and Research, HUD–DOJ seek to assess whether PFS is a viable model for scaling supportive housing to improve outcomes for a re-entry population. The main goal of the evaluation is to learn how the PFS model is implemented in diverse settings with different structures, populations, and community contexts. The Urban Institute has been conducting a multi-disciplinary, multi-method approach to ''learn as we do'' and meet the key objectives of the formative evaluation. To understand project implementation, the evaluation includes data collection on both the time that project partners dedicate to each PFS project as well as PFS partner perceptions and interactions and community-level changes that may benefit the target population. This information collection request is for an ongoing time survey and an annual partnership web survey. The time survey will be used to assess staff time spent on development of each PFS project throughout the different lifecycle phases and the partnership survey will be used to document partner perceptions and interactions and community-level changes that may benefit the target population.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Annual Partnership Survey	120	1	120	0.33	39.60	32.28	$1,278.29
Time Use Study Data Collection	36	4	144	1	144	28.91	4,163.04
Total	156				183.60		5,441.33

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) If the information will be processed and used in a timely manner;

(3) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(4) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(5) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2021–19870 Filed 9–14–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R6–ES–2021–0056; FF06E21000 212 FXES11140600000]

Endangered and Threatened Wildlife and Plants; Enhancement of Survival Permit Application; Programmatic Safe Harbor Agreement and Candidate Conservation Agreement With Assurances for 14 Aquatic Species and Associated Categorical Exclusion; State of Kansas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are announcing the availability of documents related to an application for an enhancement of survival permit (permit) under the Endangered Species Act. The Kansas Department of Wildlife and Parks has applied for a permit associated with the implementation of a programmatic safe harbor agreement (SHA) and candidate conservation agreement with assurances (CCAA) for 14 aquatic species in Kansas. The documents available for review and comment are the applicant's programmatic SHA/CCAA, which is part of the permit application, and our draft environmental action statement and low-effect screening form, which support a categorical exclusion under the National Environmental Policy Act. We invite comments from the public and Federal, Tribal, State, and local governments.

DATES: We will accept comments received or postmarked on or before October 15, 2021. Comments submitted online at *Regulations.gov* (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Time on October 15, 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 online in Docket No. FWS–R6–ES–2021–0056 at *http://www.regulations.gov.*

Submitting Comments: To submit written comments, please use one of the following methods, and note that your information requests or comments are in reference to the Kansas Aquatic SHA/CCAA.

- *Online: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket Number FWS–R6–ES–2021–0056.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R6–ES–2021–0056; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We request that you send comments by only one of the methods described above.

FOR FURTHER INFORMATION CONTACT: Gibran Suleiman, by phone at 785–539–3474, extension 114, by email at *gibran_suleiman@fws.gov,* or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from Kansas Department of Wildlife and Parks (KDWP, applicant). The applicant has applied for a 50-year enhancement of survival permit (permit) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The application addresses the potential take of five aquatic species associated with the implementation of a programmatic safe harbor agreement (SHA) and nine aquatic species associated with the implementation of a programmatic candidate conservation agreement with assurances (CCAA) on non-Federal lands in the State of Kansas. The documents available for review and comment are the applicant's programmatic SHA/CCAA, which is part of the permit application, and our draft environmental action statement and low-effect screening form, which support a categorical exclusion under the National Environmental Policy Act. We invite comments on all of the documents from the public and Federal, Tribal, State, and local governments.

Safe Harbor Agreements and Candidate Conservation Agreements With Assurances

A SHA is an agreement between the Service, partners, and landowners, for voluntary management of non-Federal lands to contribute towards recovery of an ESA-listed species in a manner that is consistent with the Service's policy on SHAs (64 FR 32717, June 17, 1999) and applicable regulations. A CCAA is an agreement between the Service, partners, and landowners for voluntary management of non-Federal lands to remove or reduce key threats to species that may become listed under the ESA, in a manner that is consistent with the Service's policy on CCAAs (81 FR 95164, December 27, 2016) and applicable regulations. In return for implementing conservation measures in a SHA/CCAA, the Service gives participants assurances that the Service will not impose land, water, or resource use restrictions or conservation requirements on ESA-listed species, or those that may become listed, beyond those agreed to in the SHA/CCAA.

Applicant's Programmatic Safe Harbor Agreement/Candidate Conservation Agreement With Assurances

The KDWP has submitted this programmatic SHA/CCAA to facilitate the reintroduction and implementation of conservation measures for the covered species on non-Federal lands in Kansas. The documents available for review and comment are the applicant's programmatic SHA/CCAA, which is part of the permit application, and our draft environmental action statement and low-effect screening form, which support a categorical exclusion under the National Environmental Policy Act.

To enroll in the programmatic SHA/CCAA, a non-Federal landowner would enter into a landowner agreement with KDWP to enroll all or a portion of their property under the SHA and/or CCAA. Upon signature by both parties, KDWP would issue a certificate of inclusion to the non-Federal landowner, extending assurances and take authorization to the participating landowner for the appropriate covered species. The requested permit duration is for 50 years from permit issuance. Proposed conservation measures include the introduction, reintroduction, augmentation, or translocation of the covered species, and protection or enhancement of aquatic, wetland, riparian, or adjacent upland habitats for the covered species. Conservation measures would be site-specific and developed by the participating landowner and KDWP. Incidental take of covered species may occur as a result of the implementation of conservation measures or ongoing land management activities on the enrolled lands.

Covered Species

The five ESA-listed species included as covered species in the SHA are the Federally threatened Neosho madtom (*Noturus placidus*), Arkansas River shiner (*Notropis girardi*), and rabbitsfoot (*Quadrula cylindrica cylindrica*) and the Federally endangered Topeka shiner (*Notropis topeka*) and Neosho mucket (*Lampsilis rafinesqueana*). The covered species included in the CCAA are the alligator snapping turtle (*Macrochelys temminckii*), peppered chub (*Macrhybopsis tetranema*), plains minnow (*Hybognathus placitus*), silver chub (*Macrhybopsis storeriana*), hornyhead chub (*Nocomis biguttatus*), butterfly mussel (*Ellipsaria lineolata*), fluted shell (*Lasmigona costata*), cylindrical papershell (*Anodontoides ferussacianus*), and flat floater (*Anodonta suborbiculata*).

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.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6 and 43 CFR 46).

Stephen Small,

Assistant Regional Director, Ecological Services, Mountain-Prairie Region.

[FR Doc. 2021–19916 Filed 9–14–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2021–0062; FXES11140300000–212]

Draft Environmental Assessment; Receipt of an Application for an Incidental Take Permit and Habitat Conservation Plan for Five Bat Species, Missouri

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received an application from the Missouri Department of Conservation (applicant) for an incidental take permit (ITP) under the Endangered Species Act. If approved, the permit would be for a 50-year period and would authorize the incidental take of two endangered species, the Indiana bat and the gray bat; one threatened species, the northern long-eared bat; and two species petitioned for Federal listing, the little brown bat and the tricolored bat. The applicant has prepared a habitat conservation plan (HCP) to cover a suite of activities associated with continued forest and habitat management within the State of Missouri.

DATES: We will accept comments received or postmarked on or before October 15, 2021.

ADDRESSES: *Document availability:* Electronic copies of the documents this notice announces, along with public comments received, will be available online in Docket No. FWS–R3–ES–2021–0062 at *http://www.regulations.gov.*

Comment submission: In your comment, please specify whether your comment addresses the proposed HCP, draft EA, or any combination of the aforementioned documents, or other supporting documents. You may submit written comments by one of the following methods:

- *Online: http://www.regulations.gov.* Search for and submit comments on Docket No. FWS–R3–ES–2021–0062.
- *U.S. mail:* Send comments to Public Comments Processing, Attn: Docket No. FWS–R3–ES–2021–0062; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: PRB/3W; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: John Weber, Deputy Field Supervisor, Missouri Ecological Services Field Office, U.S. Fish and Wildlife Service, 101 Park DeVille Drive, Suite A, Columbia, MO 65203; telephone: 573–234–2132.

Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We make available for public comment the applicant's habitat conservation plan (HCP) and announce the availability of a draft environmental assessment, which has been prepared in response to the permit application in accordance with the requirements of the National Environmental Policy Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

We, the U.S. Fish and Wildlife Service (Service), have received an application from the Missouri Department of Conservation (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), for its habitat conservation plan (HCP) for the for the Indiana bat, gray bat, northern long-eared bat, little brown bat, and tricolored bat (covered species).

The applicant conducts habitat and forest management activities statewide in Missouri; the application covers nearly the entire State, except for lands owned and managed by other Federal and State entities, and would consist of approximately 42 million acres of covered species habitat. The applicant has prepared a habitat conservation plan that describes the continued habitat and forest management operations and measures that the applicant would implement to avoid, minimize, and mitigate incidental take of the covered species. The HCP proposes to restore, enhance, and maintain more than 1 million acres of covered species habitat and has dedicated 28,000 acres of State-owned land specifically for the enhanced restoration, management, and permanent protection of priority bat management zones to further offset impacts to the covered species. If approved, the ITP would be for a 50-year period and would authorize the incidental take of two endangered species, the Indiana bat (*Myotis sodalis*) and the gray bat (*Myotis grisescens*); one threatened species, the northern long-eared bat (*Myotis septentrionalis*); and two species petitioned for Federal listing, the little brown bat (*Myotis lucifugus*) and the tricolored bat (*Perimyostis subflavus*). The applicant has prepared an HCP that describes the actions and measures that the applicant would implement to avoid, minimize, and mitigate incidental take of Indiana bat, gray bat, northern long-eared bat, little brown bat, and tricolored bat. We also announce the availability of a draft environmental assessment (EA), which has been prepared in response to the permit application in accordance with the requirements of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). We request public comment on the application and associated documents.

Background

Section 9 of the ESA and its implementing regulations prohibit the ''take'' of animal species listed as endangered or threatened. Take is defined under the ESA as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect ''listed animal species,'' or to attempt to engage in such conduct'' (16 U.S.C. 1538). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity

(16 U.S.C. 1539). Regulations governing incidental take permits for endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32. Impacts to plants do not fall under the definition of ''take''; therefore, the Service cannot authorize incidental take of plants. However, the Service cannot issue an ITP that would jeopardize the continued existence or adversely modify the designated critical habitat of any listed species.

Applicant's Proposed Project

The applicant requests a 50-year ITP to take the five bat species. The applicant determined that take is reasonably certain to occur incidental to enactment of forest and habitat management activities statewide on 42 million acres of covered species habitat. The proposed conservation strategy in the applicant's proposed HCP is designed to avoid, minimize, and mitigate the impacts of habitat and forest management on the covered species. The biological goals and objectives are to minimize potential take of the five covered species through minimization measures and to provide habitat conservation measures for the covered species to offset any impacts from implementation of habitat and forest management activities. The estimated level of take from the project is 20.38 adult Indiana bats, 0.02 northern long-eared bats, 0.11 little brown bats, and 1.81 tricolored bats on an annual basis. As a result of proposed avoidance measures, the likelihood of take for gray bat has been greatly reduced such that a measurable level of take is not anticipated to occur. To offset the impacts of the taking of the five covered bat species, the applicant proposes to avoid habitat loss-related impacts from habitat and forest management, by instituting avoidance measures during the management process, such as avoiding certain activities during the active maternity season, and implement species habitat protection, enhancement, or restoration on 28,000 acres. Beneficial and net effects of the conservation strategy include the successful management of forests, which protect potential habitat for bats; site-level maintenance and promotion of roost trees and foraging habitat; the protection and management of 28,000 acres of priority bat management zones targeted at tree-roosting covered species; the protection and enhancement of caves; and other specific measures that minimize or avoid effects to the covered species.

National Environmental Policy Act

The issuance of an ITP is a Federal action that triggers the need for compliance with NEPA. We prepared a draft EA that analyzes the environmental impacts on the human environment resulting from three alternatives: A no-action alternative, a no take alternative, the applicant's proposed action, and an early planning mitigation alternative.

Next Steps

The Service will evaluate the permit application and the comments received to determine whether the application meets the requirements of section 10(a) of the ESA. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(l)(B) of the ESA have been met. If met, the Service will issue the requested ITP to the applicant.

Request for Public Comments

The Service invites comments and suggestions from all interested parties on the proposed HCP, draft EA, and supporting documents during a 30-day public comment period (see **DATES**). In particular, information and comments regarding the following topics are requested:

1. The effects that implementation of any alternative could have on the human environment;
2. Whether or not the significance of the impact on various aspects of the human environment has been adequately analyzed; and
3. Any other information pertinent to evaluating the effects of the proposed action on the human environment including Indiana, gray, northern long-eared, little brown, and tricolored bats.

Availability of Public Comments

You may submit comments by one of the methods shown under **ADDRESSES**. We will post on *http://regulations.gov* all public comments and information received electronically or via hardcopy. All comments received, including names and addresses, will 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.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and the NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR 46).

Lori Nordstrom,

Assistant Regional Director, Ecological Services.

[FR Doc. 2021–19929 Filed 9–14–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX21DK20H2S0000; OMB Control Number 1028–0114]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; National Ground-Water Monitoring Network Cooperative Funding Application

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before October 15, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; and by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0114 in the subject line of your comments. Individuals who are hearing or speech impaired may call the Federal Relay

Service at 1–800–877–8339 for TTY assistance.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Daryll Pope by email at *dpope@usgs.gov,* or by telephone at (804) 261–2630. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on April 20, 2021. (**Federal Register**/Vol. 86, No. 74, 20515). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The USGS administers the National Ground-Water Monitoring Network which was developed through work with the Federal Advisory Committee on Water Information (ACWI) and its Subcommittee on Ground Water (SOGW). This network is required as part of Public Law 111–11, Subtitle F-Secure Water: Section 9507, 42 U.S.C. 10367, ''Water Data Enhancement by United States Geological Survey.'' The NGWMN consists of an aggregation of wells and spring from existing Federal, State, Tribal, and local groundwater monitoring networks. To support data providers for the NGWMN, the USGS will be providing funding through cooperative agreements to water-resource agencies that collect groundwater data. The USGS will be soliciting applications for funding that will request information from the Agency collecting the data. Elements will include contact information (phone number and email address), and a proposal describing their proposed work in support of the NGWMN. The proposal will describe the groundwater networks to be included in the NGWMN, the purpose of the networks, and the Principal aquifers that are monitored. Proposals may include work to become a new data provider to the NGWMN, support for maintaining connections to agency databases, and work to enhance NGWMN sites (updating metadata, well maintenance, well drilling, and support for continuous water-level monitoring equipment). The proposal would require estimates of costs to complete the above tasks and a timeline for planned completion. The proposal will be reviewed by the USGS and the NGWMN Program Board who will make funding recommendations.

Title of Collection: National Ground-Water Monitoring Network Cooperative Funding Application.

OMB Control Number: 1028–0114.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Multi-state, state or local water-resources agencies who operate groundwater monitoring networks.

Total Estimated Number of Annual Responses: 60.

Estimated Completion Time per Response: 2 hours to read 40 hours to complete application.

Total Estimated Number of Annual Burden Hours: 880.

Respondent's Obligation: Mandatory to be considered for funding.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Janice Fulford,

Director, USGS WMA Observing Systems Division.

[FR Doc. 2021–19821 Filed 9–14–21; 8:45 am]

BILLING CODE 4338–11–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 Connecticut

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of the Agreement Between the Mohegan Tribe of Indians of Connecticut (Tribe) and the State of Connecticut (State) to amend the Tribe's Class III Gaming Compact (Amendment) and Memorandum of Understanding (MOU).

DATES: The Amendment takes effect on September 15, 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 Amendment, the MOU and the State of Connecticut House Bill No. 6451 (State Gaming Act) work in unison to provide the Mohegan Tribe and the Mashantucket Pequot Tribe

with exclusivity for online casino gaming in the State, two of three licenses for off-reservation sports wagering, and online on-reservation casino gaming and sports wagering. The Amendment and MOU are approved.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2021–19839 Filed 9–14–21; 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 Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of the Sixth Amendment to the Tribal-State Compact (Amendment) for Class III Gaming between the Muckleshoot Indian Tribe (Tribe) and the State of Washington (State).

DATES: The Amendment takes effect on September 15, 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 Amendment authorizes the Tribe to engage in sports wagering at the Tribe's class III gaming facility, updates the Compact to reflect this change in various sections, and incorporates Appendix S, Sports Wagering. The Amendment is approved.

Bryan Newland,

Assistant Secretary, Indian Affairs.

[FR Doc. 2021–19844 Filed 9–14–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAKC001030/A0A501010.999900253G]

Table Mountain Rancheria; Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Liquor Control Ordinance of Table Mountain Rancheria. The Table Mountain Rancheria Liquor Control Ordinance regulates and controls the possession, sale, manufacture, and distribution of alcohol in conformity with the laws of the State of California.

DATES: This ordinance shall become effective October 15, 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Harley Long, Tribal Government Officer, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Room W–2820, Sacramento, California 95825, Telephone (916) 978–6000, Fax: (916) 978–6099.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor control ordinances for the purpose of regulating liquor transactions in Indian country. The Table Mountain Rancheria adopted the Table Mountain Rancheria Liquor Control Ordinance on June 7, 2021.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Tribal Council of the Table Mountain Rancheria duly adopted the Table Mountain Rancheria Liquor Control Ordinance on June 7, 2021.

Bryan Newland,

Assistant Secretary, Indian Affairs.

Table Mountain Rancheria's Liquor Control Ordinance shall read as follows:

Table Mountain Rancheria Liquor Control Ordinance

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ARTICLE ONE

GENERAL PROVISIONS

Section 1.1 Title

This Ordinance shall be known as Table Mountain Rancheria Liquor Control Ordinance.

The short title of this Ordinance shall be referred to as the ''Liquor Control Ordinance.''

Section 1.2 Authority

This Liquor Control Ordinance is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83–277, 67 Stat. 586, 18 U.S.C. 1161) and the powers vested in the Tribal Council of Table Mountain Rancheria (''Tribal Council'') to promulgate and adopt legislation, regulations and ordinances under Article VII, Section 1 of the Constitution of Table Mountain Rancheria.

Section 1.3 Purpose

The purpose of this Liquor Control Ordinance is to regulate and control the consumption, possession, sale, manufacture, and distribution of liquor within Lands under the Jurisdiction of Table Mountain Rancheria (''Tribe''), including its Reservation and/or Rancheria (''Reservation''), in order to permit alcohol sales by tribally owned and operated enterprises and private lessees, and at tribally approved special events. The enactment of this Liquor Control Ordinance will help promote a source of revenue for the continued operation of the tribal government, the delivery of governmental services, and the economic viability of tribal enterprises.

Section 1.4 Jurisdiction

This Liquor Control Ordinance shall apply to all Lands now or in the future under governmental control or authority of the Tribe, including, but not limited to, the Tribe's current Reservation, as well as any Lands that may be taken into trusts for the Tribe in the future.

Section 1.5 Application of 18 U.S.C. § 1161

By adopting this Liquor Control Ordinance, the Tribe hereby regulates the sale, manufacturing, distribution, possession and consumption of liquor while ensuring that such activity conforms with all applicable laws of the State of California as required by § 18 U.S.C. 1161 and the United States.

Section 1.6 Declaration of Public Policy; Findings

The Tribal Council enacts this Liquor Control Ordinance based upon the following findings:

(a) The distribution, manufacturing, possession, consumption and sale of liquor on the Tribe's Reservation is a matter of special concern to the Tribe.

(b) The Tribe is the beneficial owner of the Reservation, upon which the Tribe operates gaming and related dining, entertainment and lodging facilities.

(c) The Tribe's gaming facility serves as an integral and indispensable part of the Tribe's economy, providing revenue to the Tribe's government and employment of its tribal citizens and others in the local community.

(d) Federal law, as codified at § 18 U.S.C. 1154 and 1161, currently prohibits the introduction of liquor into Indian country, except in accordance with state law and the duly enacted laws of the Tribe.

(e) The Tribe recognizes the need for strict control and regulation of liquor transactions on lands under the Tribe's jurisdiction because of the potential problems associated with the unregulated or inadequate regulated sales, possession, manufacturing, distribution and consumption of liquor.

(f) Regulating the possession, sale, distribution, consumption and manufacture of liquor within Lands under the Tribe's jurisdiction is also consistent with the Tribe's interests in ensuring the peace, safety, health, and general welfare of the Tribe and its citizens.

(g) Tribal control and regulation of liquor on Lands under the Tribe's Jurisdiction is consistent with the Tribe's custom and tradition of controlling the possession and consumption of liquor on tribal lands, and at tribal events.

(h) The purchase, distribution, manufacturing, consumption, possession and sale of liquor on Lands under the Tribe's Jurisdiction shall take place only at duly licensed (i) tribally owned enterprises, (ii) other enterprises operated pursuant to a lease with the Tribe, and (iii) tribally—sanctioned events.

(i) The sale, consumption, possession or other commercial manufacture or distribution of liquor on Lands under the Tribe's Jurisdiction, other than sales, consumption, possession, manufacture and distributions made in strict compliance with this Liquor Control Ordinance, is detrimental to the health, safety, and general welfare of the citizens of the Tribe, and is prohibited.

ARTICLE TWO

DEFINITIONS

Section 2.1 Terms Defined

As used in this Liquor Control Ordinance, the terms set forth below shall have the following definition:

(a) *Alcohol* means ethyl alcohol, hydrated oxide of ethyl, or other distilled spirits, in any form, regardless of the source or the purpose used for its production.

(b) *Alcoholic Beverage* means all alcohol, spirits, liquor, wine, beer and any liquid or solid containing alcohol, spirits, liquor, wine, or beer, and which contains one-half of 1% or more of alcohol by volume and that is fit for human consumption, either alone or when diluted, mixed, or combined with any other substance(s).

(c) *Compact* means the State Compact entered between the State of California and the Tribe that governs the conduct of Class III gaming activities on the Reservation pursuant to the Indian Gaming Regulatory Act.

(d) *Lands* means all real property currently held in trust by the United States for the benefit of the Tribe; as well as all real property that may be taken into to trust in the future for the benefit of the Tribe.

(e) *Lands under the Tribe's jurisdiction* means and includes all Lands now or in the future under the governmental authority or control of the Tribe.

(f) *License* means, unless otherwise stated, a license issued by the Tribe in accordance with this Liquor Control Ordinance.

(g) *Liquor* means any alcoholic beverage, as defined under this section.

(h) *Person* means any individual or entity, whether Indian or non-Indian, receiver, assignee, trustee in bankruptcy, trusts, estate, firm, corporation, partnership, joint venture, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, and any other Indian tribe, band or group. The term shall also include the businesses of the Tribe.

(i) *Tribe* means Table Mountain Rancheria, a federally recognized Indian Tribe that is listed in the **Federal Register**.

(j) *Sale and Sell* means the transfer for consideration of any kind, including by exchange or barter.

(k) *State* means the State of California.

(l) *Reservation* means all Lands held in trust by the United States for the benefit of Table Mountain Rancheria.

ARTICLE THREE

LIQUOR SALES, POSSESSION, CONSUMPTION AND MANUFACTURE

Section 3.1 Possession and Consumption of Alcohol

The introduction, consumption and possession of alcoholic beverages shall be lawful within Lands under the Tribe's Jurisdiction; provided that such introduction, consumption or possession is in conformity with the laws of the State and this Liquor Control Ordinance.

Section 3.2 Retail Sales of Alcohol

The sale of alcoholic beverages shall be lawful within Lands under the Jurisdiction of the Tribe; provided that such sales are in conformity with the laws of the State and are made pursuant to a license issued by the Tribe.

Section 3.3 Manufacture of Alcohol

The manufacture of beer and wine shall be lawful within Lands under the Jurisdiction of the Tribe, provided that such manufacture is in conformity with the laws of the State and pursuant to a license issued by the Tribe.

Section 3.4 Age Limits

The legal age for possession or consumption of any alcoholic beverage within Lands under the Jurisdiction of the Tribe shall be the same as that of the State, which is currently 21 years. No person under the age of 21 years shall purchase, possess or consume any alcoholic beverage. If there is a conflict between state law and the terms of the Compact regarding the age limits for alcoholic beverage possession or consumption, the age limits in the Compact shall govern for purposes of this Liquor Control Ordinance.

ARTICLE FOUR

POWER OF THE TRIBAL COUNCIL

Section 4.1 Licensing

The Tribal Council shall have the power to issue a license under this ordinance for the sale, manufacture, distribution or possession of liquor on its Lands; as well as the power to establish procedures and standards for tribal licensing of liquor sales, manufacture, distribution and possession within Lands under the Jurisdiction of the Tribe, including the setting of a license fee schedule, and shall have the power to publish and enforce such standards; provided that no Tribal license shall issue except upon showing of satisfactory proof that the applicant is duly licensed by the state. The fact that an applicant for a Tribal license possesses a license issued by the state shall not provide the applicant with an entitlement to a Tribal License. The Tribal Council may in its discretion set standards which are more, but in no case less, stringent than those of the state.

ARTICLE FIVE

POWER TO ENFORCE

Section 5.1 Enforcement

The Tribal Council shall have the power to develop, enact, promulgate and enforce regulations as necessary for the enforcement of this Liquor Control Ordinance and to protect the public health, welfare and safety of the Tribe and Lands under the Jurisdiction of the Tribe, provided that all such regulations shall conform to, and not be in conflict with, any applicable tribal, federal or state law. Regulations enacted pursuant to this Liquor Control Ordinance may include provisions for the suspension or revocation of a tribal liquor license, reasonable search and seizure provisions, and civil and criminal penalties for the violation of the Liquor Control Ordinance to the full extent permitted by federal law and consistent with due process.

(a) Tribal law enforcement personnel and security personnel duly authorized by the Tribal Council shall have the authority to enforce this Liquor Control Ordinance by confiscating any liquor sold, possessed, distributed, manufactured or introduced within the Lands under the Jurisdiction of the Tribe in violation of this Liquor Control Ordinance or of any regulations duly adopted under or pursuant to this Liquor Control Ordinance.

(b) The Tribal Council shall have the exclusive jurisdiction to hold hearings on violations of this Liquor Control Ordinance and any procedures or regulations adopted under or pursuant to this Liquor Control Ordinance; to promulgate appropriate procedures governing such hearings; to determine and enforce penalties or damages for violations of this Liquor Control Ordinance; and delegate to subordinate hearing officer or panel the authority to take any or all of the foregoing actions on its behalf.

ARTICLE SIX

TAXES

Section 6.1 Taxation

Nothing contained in this Liquor Control Ordinance is intended to, nor does in any way, limit or restrict the Tribe's ability to impose any tax upon the sale or consumption of liquor or any alcoholic beverage. The Tribe retains the right to impose such taxes by appropriate statute or ordinance to the full extent permitted by federal law.

ARTICLE SEVEN

MISCELLANEOUS PROVISIONS

Section 7.1 Sovereign Immunity Preserved

Nothing contained in this Liquor Control Ordinance shall be deemed or construed as a waiver of the Tribe's sovereign immunity or is intended to be construed, anyway, to limit, alter, restrict, or waive the sovereign immunity of the Tribe or any of its officers, entities or agents. All inherent sovereign rights of the Tribe, its officers, entities and/or agents are hereby expressly reserved, including the Tribe's sovereign immunity from unconsented suits or actions of any kind.

Section 7.2 Conformance With Applicable Laws

All acts and transactions under this Liquor Control Ordinance shall be in conformity with the Compact and the laws of the State to the extent required by § 18 U.S.C. 1161, and with all federal laws regarding alcohol in Indian Country.

Section 7.3 Effective Date

This Liquor Control Ordinance shall be effective as of the date on which the Secretary of Interior certifies this Ordinance and publishes the same in the **Federal Register**.

Section 7.4 Repeal of Prior Acts

All prior enactments of the Tribal Council, including tribal resolutions, policies, regulations, statutes or ordinances pertaining to the subject matter set forth in this Liquor Control Ordinance are hereby rescinded.

Section 7.5 Amendments

This Liquor Control Ordinance may only be amended pursuant to an amendment duly enacted by the Tribal Council and certified by the Secretary of Interior and published in the **Federal Register**, if required.

Section 7.6 Severability and Savings Clause

If any part or provision of this Liquor Control Ordinance is held invalid, void or unenforceable by a court of competent jurisdiction, such adjudication should not be held to render such provisions inapplicable to the other persons or circumstances. Furthermore, the remainder of the ordinance shall not be affected and shall continue to remain in full force and effect.

[FR Doc. 2021–19838 Filed 9–14–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[212A2100DD/AAK3003100/A0C904040.99990]

Annual Meeting Under Indian Employment, Training and Related Services Act, as Amended

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Bureau of Indian Affairs (BIA), is announcing the annual meeting of the Federal agencies and Tribes that participate in the Indian Employment, Training, and Related Services Act of 2017, also known as ''Public Law 477'' Work Group. For the safety of all individuals, the meeting will be conducted virtually via MS TEAMs and by telephone.

DATES: The annual Federal Partner and Tribal 477 Work Group meeting will be held on Thursday, September 16, 2021 from 12:30 p.m. to 4 p.m. Eastern Daylight Time (EDT).

ADDRESSES: All Work Group activities and meetings will be conducted online and by phone. See the **SUPPLEMENTARY INFORMATION** section of this notice for directions to join MS TEAMs and by telephone.

FOR FURTHER INFORMATION CONTACT: Jeanette Hanna, Deputy Bureau Director, Indian Services, Bureau of Indian Affairs, *Jeanette.Hanna@bia.gov* (202) 513–7640.

SUPPLEMENTARY INFORMATION: The annual Federal Partner and Tribal 477

Work Group meeting will be on MS TEAMs video conference and by phone. Call-information as follows:

MS TEAMs: *https://outlook.office365.com/calendar/item/AAMkADA0NGQ2YjA4LTI3ZDgtNGNmOS1iMDc0LTgxNzBmYWZkMzgxOQBGAAAAAADJO%2FT7FtupTIPnsmURs6FgBwB5i3zh0RRARbawCO9d77i1AAAAAAENAAB5i3zh0RRARbawCO9d77i1AAJxp9NNAAA%3D*

Call in (audio only): (202) 640–1187

Phone Conference Id: 635973133#

Background

In 2017, the Congress enacted the Indian Employment Training and Related Services Consolidation Act of 2017, Public Law 115–93, codified at 25 U.S.C. 3401–3417 (''2017 Act''). The 2017 update amended and expanded the Indian Employment and Related Services Demonstration Act of 1992, Public Law 102–477 (as amended in 2017, ''PL 477'') by, in part, identifying 12 Federal agencies that are now subject to the amended law. Under PL 477, Tribes may propose to integrate eligible grant programs from the Departments of the Interior, Agriculture, Commerce, Education, Energy, Health & Human Services, Homeland Security, Housing & Urban Development, Justice, Labor, Transportation, and Veterans Affairs, consolidate and reprogram grant funds in accordance with a single plan, budget, and report approved by the Secretary of the Interior (''477 Plan''). As required by the 2017 updates to PL 477, the Department of the Interior entered into a Memorandum of Agreement (MOA) among the 12 Federal agencies to implement PL 477.

Annual Meeting

As DOI is the lead agency responsible for implementing of PL 477, the BIA, as delegated by the Secretary of the Interior, announces the annual meeting of participating Tribes and Federal agencies. As directed by statute, the meeting will be co-chaired by the Principal Deputy Assistant Secretary—Indian Affairs, Bryan Newland, and the 477 Tribal Workgroup Committee Chair, Margaret Zientek. 25 U.S.C. 3410(a)(3)(B)(i).

The agenda will include:

I. Discussion on Public Law 102–477, as amended
- Status of Memorandum of Agreement
- Recommendation for Changes/Improvements/Areas to be addressed
- Status of Labor Force Report

II. Current Status of Participating Tribes
- 477 Programs to be integrated
- Plan Approval/Denials
- Waiver Approval/Denials
- Funds Transfer
- Annual Reports
- 477 Tribal Recognition

III. Miscellaneous
- Financial Assistance for 477 Tribes to develop a database
- Expansion of Tribal Programs
- Establish 2022 Annual Meeting of participating Tribes and Federal agencies

To join the meeting, use MS TEAMs video or call in by phone:

MS TEAMs: *https://outlook.office365.com/calendar/item/AAMkADA0NGQ2YjA4LTI3ZDgtNGNmOS1iMDc0LTgxNzBmYWZkMzgxOQBGAAAAAADJO%2FT7FtupTIPnsmURs6FgBwB5i3zh0RRARbawCO9d77i1AAAAAAENAAB5i3zh0RRARbawCO9d77i1AAJxp9NNAAA%3D*

Call in (audio only): (202) 640–1187

Phone Conference Id: 635973133#

Bryan Newland,

Principal Deputy Assistant Secretary, Indian Affairs.

[FR Doc. 2021–19845 Filed 9–14–21; 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 Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of the Third Amendment to the Tribal-State Compact (Amendment) for Class III Gaming between the Confederated Tribes of the Colville Reservation (Colville Tribe) and the State of Washington (State) and the Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation (Shoalwater Bay Tribe) and the State of Washington.

DATES: The Amendment takes effect on September 15, 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 Amendment authorizes each Tribe to engage in sports wagering at the respective Tribe's class III gaming facilities, updates each Compact to reflect this change in various sections, and incorporates Appendix S, Sports Wagering. The Amendment is approved.

Bryan Newland,

Assistant Secretary, Indian Affairs.

[FR Doc. 2021–19842 Filed 9–14–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Protection and Restoration of Tribal Homelands

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Tribal consultation sessions.

SUMMARY: The Department invites representatives of federally recognized Tribes to consult on several topics related to the protection and restoration of Tribal homelands, including but not limited to: the land-into-trust process, leasing and rights-of-way, and sacred sites and treaty rights.

DATES: Please see the **SUPPLEMENTARY INFORMATION** section of this notice for dates of the sessions. Tribes are also invited to submit written input by 11:59 p.m. ET, Friday, November 5, 2021.

ADDRESSES: Please see the **SUPPLEMENTARY INFORMATION** section of this notice for links to register for each of the sessions. Tribes are also invited to submit written input to *consultation@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action—Indian Affairs, (202) 273–4680, or *elizabeth.appel@bia.gov.*

SUPPLEMENTARY INFORMATION:

Background

Protecting and restoring Tribal homelands is a key priority of the Department. While the importance of Tribal homelands undoubtedly touches upon many facets critical to Tribal sovereignty and self-determination, the consultation will focus on three specific topics: The land-into-trust process;

leasing and rights-of-way; and sacred sites and treaty rights. As a starting point to facilitate discussion, the Department poses the questions stated below and organized by topic. The Department also welcomes additional comments and suggestions from Tribes beyond the questions listed.

A. Land-Into-Trust Process

1. Does the Department's land-into-trust process adequately allow Tribes to consolidate landholdings in or near existing reservations?

2. Does the Department's land-into-trust process adequately allow Tribes to establish homelands for landless Tribes?

3. How can the Department improve its land-into-trust process to facilitate protection of sacred sites, conservation, and the exercise of civil and criminal jurisdiction?

4. For Tribes in Alaska, how should the Department approach the land-into-trust process to adequately account for factors that are unique to Alaska?

B. Leasing and Rights-of-Way

5. Are the Department's existing regulations governing agricultural leasing on Indian lands adequate to protect the interests of Tribes and Indian landowners?

6. Are any changes needed to the Department's leasing and rights-of-way procedures to clarify taxing jurisdiction in Indian country and to promote economic development in Indian country?

C. Sacred Sites and Treaty Rights

7. What steps can the Department take to ensure that Tribes have the ability to protect their sacred places and access those sites to exercise religious rights?

8. What steps can the Department take to protect the exercise of off-reservation treaty rights, including habitat for treaty resources?

9. What actions can the Department take in relation to other agencies to ensure the protection of sacred sites and treaty rights?

D. Overall

10. What is the most pressing need for protection and restoration of Tribal homelands that the Assistant Secretary—Indian Affairs can help address?

Tribal Consultation Sessions

To best accommodate Tribes' locations and ensure everyone's safety, we will be holding virtual sessions scheduled by time zone. Any Tribal leader unable to make the session reserved for the time zone in which his or her Tribe is located is welcome to join an alternate session.

- For Tribes in the Alaska Time Zone:
  - Monday, October 18, 2021
  - 10 a.m.–12 p.m. ADT
  - Please register in advance at: *https://www.zoomgov.com/meeting/register/vJItc-yopjoqHFybM7shIc8K5hb8oa0FJB4*
- For Tribes in the Eastern and Central Time Zones:
  - Thursday, October 21, 2021
  - 2 p.m.–4 p.m. EDT/1 p.m.–3 p.m. CDT
  - Please register in advance at: *https://www.zoomgov.com/meeting/register/vJIscO6hpzwoHyTxxS4siXAZfsSB5ZixZRI*
- For Tribes in the Mountain Daylight Time Zone:
  - Monday, October 25, 2021
  - 1 p.m.–3 p.m. MDT
  - Please register in advance at: *https://www.zoomgov.com/meeting/register/vJIsduiuqjgsH74MwjdZpgw9uaCJVD_Uu_Y*
- For Tribes in the Pacific and Mountain Standard Time Zones:
  - Tuesday, October 26, 2021
  - 10 a.m.–12 p.m. PDT
  - Please register in advance at: *https://www.zoomgov.com/meeting/register/vJItd-qvqT4rGagVja9wUUoFds41BDPgMYc*

Bryan Newland,

Assistant Secretary, Indian Affairs.

[FR Doc. 2021–19846 Filed 9–14–21; 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 Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of the Fourth Amendment to the Tribal-State Compact (Amendment) for Class III Gaming between the Kalispel Tribe of Indians (Tribe) and the State of Washington (State).

DATES: The Amendment takes effect on September 15, 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 Amendment authorizes the Tribe to engage in sports wagering at the Tribe's class III gaming facilities, updates the Compact to reflect this change in various sections, and incorporates Appendix S, Sports Wagering. The Amendment is approved.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2021–19843 Filed 9–14–21; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000.L1440000.BJ0000.212.HAG 21–0078]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Oregon/Washington State Office, Portland, Oregon, 30 calendar days from the date of this publication.

DATES: Protests must be received by the BLM prior to the scheduled date of official filing, October 15, 2021.

ADDRESSES: A copy of the plats may be obtained from the Public Room at the Bureau of Land Management, Oregon/Washington State Office, 1220 SW 3rd Avenue, Portland, Oregon 97204, upon required payment. The plats may be viewed at this location at no cost.

FOR FURTHER INFORMATION CONTACT: Mary Hartel, Chief Cadastral Surveyor of Oregon/Washington; telephone: (503) 808–6131; email: *mhartel@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 to contact Ms. Hartel during normal business hours. The service is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plats of survey of the following described lands are scheduled to be officially filed

in the Bureau of Land Management, Oregon/Washington State Office, Portland, Oregon:

Willamette Meridian, Oregon

T. 21 S., R. 2 W., accepted June 30, 2021
T. 3 S., R. 6 W., accepted June 30, 2021
T. 12 S., R. 3 E., accepted June 30, 2021
T. 7 S., R. 2 E., accepted June 30, 2021
T. 39 S., R. 2 E., accepted June 30, 2021

Willamette Meridian, Washington

T. 39 N., R. 26 E., accepted June 30, 2021
T. 9 N., R 27 E., accepted June 30, 2021

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the Chief Cadastral Surveyor for Oregon/Washington, Bureau of Land Management. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. The notice of protest must be filed before the scheduled date of official filing for the plat(s) of survey being protested. Any notice of protest filed after the scheduled date of official filing will be untimely and will not be considered. A notice of protest is considered filed on the date it is received by the Chief Cadastral Surveyor for Oregon/Washington during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed with the Chief Cadastral Surveyor for Oregon/Washington within 30 calendar days after the notice of protest is filed. If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the next business day following dismissal or resolution of all protests of the plat.

Before including your address, phone number, email address, or other personal identifying information in a notice of protest or statement of reasons, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 U.S.C. Chap. 3)

Mary J.M. Hartel,

Chief Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2021–19909 Filed 9–14–21; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 211S180110; S2D2S SS08011000 SX064A000 21XS501520; OMB Control Number 1029–0080]

Permanent Regulatory Program Requirements—Standards for Certification of Blasters

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before October 15, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MIB, Washington, DC 20240, or by email to *mgehlhar@osmre.gov.* Please reference OMB Control Number 1029–0080 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at *mgehlhar@osmre.gov,* or by telephone at (202) 208–2716. 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 (PRA; 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on May 28, 2021 (86 FR 28890). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The information is used to identify and evaluate new blaster certification programs. Part 850 implements Section 719 of the Surface Mining Control and Reclamation Act (SMCRA). Section 719 requires the Secretary of the Interior to issue regulations which provide for each State regulatory authority to train, examine and certify persons for engaging in blasting or use of explosives in surface coal mining operations. Each State that

wishes to certify blasters must submit a blasters certification program to OSMRE for approval.

Title of Collection: Permanent Regulatory Program Requirements—Standards for Certification of Blasters.

OMB Control Number: 1029–0080.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses and state governments.

Total Estimated Number of Annual Respondents: 1.

Total Estimated Number of Annual Responses: 1.

Estimated Completion Time per Response: 320 hours.

Total Estimated Number of Annual Burden Hours: 320.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

Information Collection Clearance Officer, Division of Regulatory Support.

[FR Doc. 2021–19829 Filed 9–14–21; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 211S180110; S2D2S SS08011000 SX064A000 21XS501520; OMB Control Number 1029–0043]

Agency Information Collection Activities; Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before October 15, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MIB, Washington, DC 20240, or by email to *mgehlhar@osmre.gov.* Please reference OMB Control Number 1029–0043 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at *mgehlhar@osmre.gov,* or by telephone at (202) 208–2716. 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 (PRA; 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on May 3, 2021 (86 FR 23427). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The regulations at 30 CFR part 800 primarily implement § 509 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), which requires that people planning to conduct surface coal mining operations first post a performance bond to guarantee fulfillment of all reclamation obligations under the approved permit. The regulations also establish bond release requirements and procedures consistent with § 519 of the Act, liability insurance requirements pursuant to § 507(f) of the Act, and procedures for bond forfeiture should the permittee default on reclamation obligations.

Title of Collection: Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations under Regulatory Programs.

OMB Control Number: 1029–0043.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses and state governments.

Total Estimated Number of Annual Respondents: 3,375.

Total Estimated Number of Annual Responses: 8,158.

Estimated Completion Time per Response: Varies from 2 hours to 35 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 66,440.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: $521,735.

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.*).

Mark J. Gehlhar,

Information Collection Clearance Officer, Division of Regulatory Support.

[FR Doc. 2021–19830 Filed 9–14–21; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 211S180110; S2D2S SS08011000 SX064A000 21XS501520; OMB Control Number 1029–0087]

Abandoned Mine Land Problem Area Description Form

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before November 15, 2021.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MIB, Washington, DC 20240, or by email to *mgehlhar@osmre.gov.* Please reference OMB Control Number 1029–0087 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at *mgehlhar@osmre.gov,* or by telephone at 202–208–2716.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are 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 agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency 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. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you 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 problem area description (PAD) form is used to update the Office of Surface Mining Reclamation and Enforcement's electronic inventory of abandoned mine lands (e-AMLIS). From this inventory, the most serious problem areas are selected for reclamation through the apportionment of funds to States and Indian tribes.

Title of Collection: Abandoned Mine Land Problem Area Description Form.

OMB Control Number: 1029–0087.

Form Number: OSM–76.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State and Tribal governments.

Total Estimated Number of Annual Respondents: 27.

Total Estimated Number of Annual Responses: 1,616.

Estimated Completion Time per Response: Varies 1.5 hours to 8 hours, depending activity.

Total Estimated Number of Annual Burden Hours: 4,413.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

Information Collection Clearance Officer, Division of Regulatory Support.

[FR Doc. 2021–19828 Filed 9–14–21; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–462 and 731–TA–1156–1158 (Second Review) and 731–TA–1043–1045 (Third Review)]

Polyethylene Retail Carrier Bags From China, Indonesia, Malaysia, Taiwan, Thailand, and Vietnam; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty orders on polyethylene retail carrier bags from China, Indonesia, Malaysia, Taiwan, Thailand, and Vietnam and the countervailing duty order on polyethylene retail carrier bags from Vietnam would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: July 7, 2021.

FOR FURTHER INFORMATION CONTACT: Charles Cummings (202–708–1666), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On July 7, 2021, the Commission determined that the domestic interested party group response to its notice of institution (86 FR 17200, April 1, 2021) of the subject five-year reviews was adequate and that

the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Staff report.—A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for these reviews on September 13, 2021. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before September 20, 2021 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by September 20, 2021. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 10, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–19898 Filed 9–14–21; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes is available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found a joint response to its notice of institution filed by the Polyethylene Retail Carrier Bags Committee on behalf of six domestic producers of polyethylene retail carrier bags (Hilex Poly Company, LLC; Superbag LLC; Unistar Plastics, LLC; Command Packaging; Command Packaging Texas; and Roplast Industries, Inc.) to be adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–663–664 and 731–TA–1555–1556 (Final)]

Granular Polytetrafluoroethylene (PTFE) Resin From India and Russia; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–663–664 and 731–TA–1555–1556 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of granular polytetrafluoroethylene (''PTFE'') resin from India and Russia, provided for in subheadings 3904.61.00 and 3904.69.50 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (''Commerce'') to be subsidized and sold at less-than-fair-value.

DATES: September 2, 2021.

FOR FURTHER INFORMATION CONTACT: Kristina Lara ((202) 205–3386), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of these investigations, Commerce has defined the subject merchandise as granular PTFE resin, ''whether filled or unfilled, whether or not modified, and whether or not containing co-polymer, additives, pigments, or other materials. Also included is PTFE wet raw polymer. The chemical formula for granular PTFE resin is C2F4, and the Chemical Abstracts Service (CAS) Registry number is 9002–84–0.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise processed in a third country, including by filling, modifying, compounding, packaging with another product, or performing any other finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the granular PTFE resin.

The product covered by these investigations does not include dispersion or coagulated dispersion (also known as fine powder) PTFE.

PTFE further processed into micropowder, having particle size

typically ranging from 1 to 25 microns, and a melt-flow rate no less than 0.1 gram/10 minutes, is excluded from the scope of these investigations.''

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by Commerce that certain benefits which constitute subsidies within the meaning of § 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in India and Russia of granular PTFE resin, and that such products are being sold in the United States at less than fair value within the meaning of § 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on January 27, 2021 by Daikin America, Inc., Orangeburg, New York.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on December 17, 2021, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Wednesday, January 19, 2022. Information about the place and form of the hearing, including about how to participate in and/or view the hearing, will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.* Interested parties should check the Commission's website periodically for updates. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before Thursday, January 13, 2022. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on Friday, January 14, 2022. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is January 3, 2022. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is January 26, 2022. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before January 26, 2022. On February 9, 2022, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 11, 2022, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to § 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: September 10, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–19897 Filed 9–14–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1206]

Certain Percussive Massage Devices; Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on August 20, 2021, the presiding administrative law judge (''ALJ'') issued an Initial Determination on Violation of Section 337. The ALJ also issued a Recommended Determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public only.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: A general exclusion order directed to infringing articles imported, sold for importation, and/or sold after importation; and a cease and desist order directed to respondent Kinghood International Logistics, Inc. of La Mirada, California. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bonding issued in this investigation on August 20, 2021. Comments should address whether issuance of the recommended remedial order in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended remedial order are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended order;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended order within a commercially reasonable time; and

(v) explain how the recommended order would impact consumers in the United States.

Written submissions must be filed no later than by close of business on October 1, 2021.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1206'') in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*) Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 10, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–19905 Filed 9–14–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–282 (Fifth Review)]

Petroleum Wax Candles From China; Scheduling of Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on petroleum wax candles from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: July 7, 2021.

FOR FURTHER INFORMATION CONTACT: Julie Duffy (202–708–2579), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On July 7, 2021, the Commission determined that the domestic interested party group response to its notice of institution (86 FR 17203, April 1, 2021) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).[2]

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Staff report.—A staff report containing information concerning the subject matter of the review has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for this review on September 10, 2021. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before September 17, 2021 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by September 17, 2021. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined this review is extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 9, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–19827 Filed 9–14–21; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes is available from the Office of the Secretary and at the Commission's website.

[2] Vice Chair Stayin did not participate in this proceeding.

[3] The Commission has found the response to its notice of institution filed by the National Candle Association, a trade association whose 36 members are either producers or wholesalers of U.S. produced petroleum wax candles, to be adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1200]

Certain Electronic Devices, Including Streaming Players, Televisions, Set Top Boxes, Remote Controllers, and Components Thereof; Commission Determination To Review the Final Initial Determination in Part and To Request Written Submissions on the Issues Under Review, Remedy, Bonding, and the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined to review in part certain findings in a final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') and to solicit briefing on the issues under review, as well as remedy, bonding, and the public interest.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 22, 2020, based on a complaint filed by Universal Electronics, Inc. (''UEI'') of Scottsdale, Arizona. 85 FR 31211–212 (May 22, 2020). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''Section 337''), in the importation into the United States, sale for importation, or sale in the United States after importation of certain electronic devices, including streaming players, televisions, set top boxes, remote controllers, and components thereof, by reason of infringement of one or more of the asserted claims of U.S. Patent Nos. 7,696,514 (''the '514 patent''); 9,911,325 (''the '325 patent''); 9,716,853 (''the '853 patent''); 7,589,642 (''the '642 patent''); 10,593,196 (''the '196 patent''); and 10,600,317 (''the '317 patent''). *Id.* The complaint alleges that a domestic industry exists. *Id.*

The Commission's notice of investigation names the following respondents: Roku Inc. of Los Gatos, California (''Roku''); TCL Electronics Holdings Ltd. of New Territories, Hong Kong; Shenzhen TCL New Technology Co. Ltd. of Shenzhen, China; TCL King Electrical Appliances Co. Ltd. of Huizhou, China; TTE Technology Inc. of Corona, California; TCL Corp. of Huizhou City, China; TCL Moka Int'l Ltd. of New Territories, Hong Kong; TCL Overseas Marketing Ltd. of New Territories, Hong Kong; TCL Industries Holdings Co., Ltd. of New Territories, Hong Kong; and TCL Smart Device Co. of Bac Tan Uyen District, Vietnam (collectively, ''the TCL Respondents''); Hisense Co. Ltd. of Qingdao, China; Hisense Electronics Manufacturing Co. of America Corp. of Suwanee, Georgia; Hisense Import & Export Co. Ltd. of Qingdao, China; Qingdao Hisense Electric Co., Ltd. of Qingdao, China; and Hisense International Co., Ltd. of Shen Wang, Hong Kong (collectively, ''the Hisense Respondents''); Funai Electric Co., Ltd. of Osaka, Japan; Funai Corp. Inc. of Rutherford, New Jersey; and Funai Co., Ltd. of Nakhon Ratchasima, Thailand (collectively, ''the Funai Respondents''). *Id.* The Office of Unfair Import Investigations is not participating in this investigation. *Id.*

The Commission partially terminated the investigation with respect to certain patents and patent claims that were withdrawn by UEI, including all of the asserted claims of the '514 patent, '325 patent, and '853 patent. *See* Order No. 27 (Dec. 2, 2020), *unreviewed by* Comm'n Notice (Dec. 23, 2020); Order No. 32 (Dec. 21, 2020), *unreviewed by* Comm'n Notice (Jan. 5, 2021); Order No. 33 (Dec. 29, 2020), *unreviewed by* Comm'n Notice (Jan. 13, 2021); Order No. 34 (Jan. 4, 2021), *unreviewed by* Comm'n Notice (Jan. 21, 2021); Order No. 44 (Feb. 2, 2021), *unreviewed by* Comm'n Notice (Feb. 19, 2021); Order No. 49 (Feb. 9, 2021), *unreviewed by* Comm'n Notice (Feb. 24, 2021); Order No. 66 (March 23, 2021), *unreviewed by* Comm'n Notice (April 8, 2021); Order No. 67 (Apr. 6, 2021), *unreviewed by* Comm'n Notice (Apr. 22, 2021).

The Commission also terminated the investigation with respect to the Hisense Respondents, the TCL Respondents, and the Funai Respondents. Order No. 67 (Apr. 6, 2021), *unreviewed by* Comm'n Notice (Apr. 22, 2021).

On February 18, 2021, the Commission determined not to review an ID entering summary determination that claim 19 of the '642 patent is practiced by the domestic industry products and infringed by the accused ''Elk'' series of products. Order No. 38 (Jan. 19, 2021), *unreviewed by* Comm'n Notice (Feb. 18, 2021). On February 24, 2021, the Commission determined not to review an ID entering summary determination that the technical prong of the domestic industry requirement is satisfied for claims 1–3, 5–8, and 16 of the '325 patent. Order No. 41 (Jan. 25, 2021), *unreviewed by* Comm'n Notice (Feb. 24, 2021).

On February 24, 2021, the Commission determined to review and reverse an ID granting Roku's motion for summary determination that UEI lacks standing to assert the '196 patent and to remand the standing question to the ALJ for further consideration. Order No. 40 (Jan. 25, 2021), *reviewed by* Comm'n Notice (Feb. 24, 2021); *see also* Comm'n Op. (Mar. 3, 2021).

The ALJ held on evidentiary hearing from April 19–23, 2021. By the time of the hearing, the only remaining respondent was Roku and the only remaining claims at issue for infringement or domestic industry purposes were claim 19 of the '642 patent; claims 3, 6, 9, and 11 of the '347 patent; and claims 1–3, 11, and 13–15 of the '196 patent.

On July 9, 2021, the ALJ issued the subject final ID, finding a violation of Section 337 as to the '196 patent but no violation with respect to either the '642 patent or '317 patent.

On July 23, 2021, both UEI and Roku filed petitions for review of certain findings in the final ID, pursuant to Commission Rule 210.43(a) (19 CFR 210.43(a)). On August 2, 2021, the parties filed their respective replies, pursuant to Commission Rule 210.43(c) (19 CFR 210.43(c)).

Having reviewed the record in this investigation, including the final ID, the parties' petitions, and responses thereto, the Commission has determined to review all issues relating to the '196 patent, whether UEI satisfied the technical prong for the '317 patent, and the ID's conclusion that UEI satisfied the economic prong of the domestic industry requirement under Section 337(a)(3)(B) with respect to the '196 patent, the '317 patent, and the '642 patent. The Commission further notes that the parties have agreed that Roku's Alice-5 remote control is not among the accused products. *See* ID at 23. The Commission has determined not to review any of the ID's other findings.

The parties are asked to provide additional briefing on the following issues under review:

(A) Does the limitation ''for use in configuring the remote control device to transmit'' in the final clause of claim 1 of the '196 patent require construction? *See* '196 patent at 17:23–25 (emphasis added). If so, how should it be construed?

(B) In view of the response to Question (A), *supra,* do the accused Roku products infringe claim 1 of the '196 patent, with particular attention to: (i) Whether converting a radiofrequency (''RF'') signal to an infrared (''IR'') signal in the accused remote control devices satisfies the limitation ''*for use in configuring* the remote control device to transmit a second command''; and (ii) whether the accused products use the same ''first data'' to indicate whether the ''second media device'' will be ''responsive'' or ''unresponsive'' to the ''first command,'' as set forth in the final clause of claim 1. *See* '196 patent at 17:13–32.

(C) Does your response to Question (A), *supra,* affect the ID's invalidity analysis? Would the ID's invalidity analysis with respect to the '196 patent be affected if the term ''*for use in configuring* the remote control device to transmit'' in the final clause of claim 1 was found not to cover converting an RF signal to an IR signal?

(D) With respect to the ID's invalidity analysis for the '196 patent, explain whether or how Chardon (U.S. Patent Application Pub. No. 2012/0249890) or Mishra (U.S. Patent Application No. 2001/0005197), singly or in combination, discloses to a person of ordinary skill in the art a ''first media device'' that either ''cause[s] the first media device to be configured to transmit a first command directly to the second media device [via HDMI]'' or ''transmit[s] a second data to a remote control device . . . for use in configuring the remote control device to

transmit a second command directly to the second media device,'' depending on whether the ''second media device'' is ''responsive'' or ''unresponsive'' to a ''first command,'' respectively, as set forth in the final clause of claim 1. *See* '196 patent at 17:13–32. Explain whether there is a motivation to combine the references and clear and convincing evidence of obviousness.

(E) Do the Samsung televisions that UEI identified as satisfying the technical prong of the domestic industry requirement practice the asserted claims of the '317 patent, with particular attention to: (i) Whether the term ''a display device *coupled to* the controlled device'' in claim 1 can cover an electronic component (*e.g.,* LCD display screen) contained within an electronic device (*e.g.,* an LCD television) (*see* '317 patent at 8:55–56 (emphasis added)); and (ii) identify the ''controlled device,'' ''receiver,'' ''transmitter,'' ''display device,'' ''processing device,'' and other components recited in the asserted claims of the '317 patent to the extent the asserted claims read on UEI's domestic industry products.

(F) Given that the domestic industry products for the '196 and '317 patents include downstream products, such as televisions (ID at 6, 51, 102), to what extent should an evaluation of the significance of investments in labor and capital under Section 337(a)(3)(B) take into account labor and capital associated with the downstream products?

The parties are requested to brief only the discrete issues identified above, with reference to the applicable law and evidentiary record. The parties are not to brief any other issues on review, which have already been adequately presented in the parties' previous filings.

In connection with the final disposition of this investigation, the statute authorizes issuance of: (1) An order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease-and-desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (December 1994).

The statute requires the Commission to consider the effects of any remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or cease-and-desist order would have on: (1) The public health and welfare; (2) competitive conditions in the U.S. economy; (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation; and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's action. *See* Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to this investigation are requested to file written submissions on the issues identified above in this notice. In addition, the parties, interested government agencies, and any other interested parties are requested to file written submissions on the issues of remedy, the public interest, and bonding. Such initial submissions should include views on the recommended determination by the ALJ on remedy and bonding. Explain whether your views on public interest or bonding would differ if the redesigned products (or redesigned components of a product) put forward by Respondents were excluded from any remedy.

In its initial submission, Complainant is requested to identify the remedy sought and to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to provide the HTSUS subheadings under which the accused products are imported. Complainant is further requested to supply the names of known importers of the Respondents' products at issue in this investigation. Complainant is also requested to identify and explain, from the record, articles that it contends are ''components of'' the subject products, and thus potentially covered by the proposed remedial orders, if imported separately from the subject products. *See* 85 FR at 31211. Failure to provide this information may result in waiver of any remedy directed to ''components of'' the subject products, in the event any violation may be found.

The parties' written submissions and proposed remedial orders must be filed no later than the close of business on September 24, 2021. Reply submissions must be filed no later than the close of business on October 1, 2021. Opening submissions are limited to 40 pages. Reply submissions are limited to 35 pages. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1200'') in a prominent place on the cover page and/or first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract

personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The Commission vote for this determination took place on September 9, 2021.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 9, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–19849 Filed 9–14–21; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Granting of Requests for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**. The following transaction was granted early termination—on the date indicated—of the waiting period provided by law and the premerger notification rules. The listing includes the transaction number and the parties to the transaction. The Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice made the grants. Neither agency intends to take any action with respect to this proposed acquisitions during the applicable waiting period.

EARLY TERMINATION GRANTED

08/26/2021		
20212939	G	Alight, Inc.; Alight Solutions LLC; Aon plc; Aon Hewitt Health Market Insurance Solutions Inc.

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division, Department of Justice.

[FR Doc. 2021–19943 Filed 9–14–21; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–893]

Importer of Controlled Substances Application: Cambridge Isotope Laboratories

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Cambridge Isotope Laboratories has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTAL INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before October 15, 2021. Such persons may also file a written request for a hearing on the application on or before October 15, 2021.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on July 29, 2021, Cambridge Isotope Laboratories, 50 Frontage Road, Andover, Massachusetts 01810–5413, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid.	2010	I
Tetrahydrocannabinols	7370	I
Morphine	9300	II

The company plans to import the listed controlled substances for analytical research. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Brian S. Besser,

Acting Assistant Administrator.

[FR Doc. 2021–19944 Filed 9–14–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On September 9, 2021, the U.S. Department of Justice (DOJ) filed a Complaint and lodged a proposed Consent Decree with the United States District Court for the Eastern District of Michigan in *United States of America and Michigan Department of Environment, Great Lakes, and Energy* v. *Arbor Hills Energy LLC* No. 5:21–cv–12098.

The proposed Consent Decree resolves several Clean Air Act and State law claims against Arbor Hills Energy LLC (AHE), including for exceedances of permitted SO_2 emissions limits, at AHE's landfill gas-to-energy facility in Northville, Michigan. The AHE facility converts landfill gas (LFG), which is generated by decomposition of waste from an adjacent landfill, into electricity by burning it as fuel in four gas turbines.

Under the settlement, by March 2023 AHE will either construct a renewable natural gas facility that converts LFG into pipeline quality natural gas and would virtually eliminate SO_2 emissions, or install a sulfur treatment system that achieves a 64 percent reduction in SO_2 emissions. Either pathway will bring AHE into compliance with the Clean Air Act and mitigate past excess SO_2 emissions from the AHE facility. Based on an evaluation of the company's limited ability to pay, AHE also will pay a civil penalty of $750,000, split equally between the United States and the State of Michigan.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America and Michigan Department of Environment, Great Lakes, and Energy* v. *Arbor Hills Energy LLC,* D.J. Ref. No. 90–5–2–1–12226. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted by email or mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *http://www.justice.gov/enrd/consent-decrees.*

We will provide a paper copy of the proposed Consent Decree upon written request and payment of the reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $12.00 (25 cents per page reproduction cost), payable to the United States Treasury.

Patricia A. McKenna,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2021–19928 Filed 9–14–21; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under The Clean Air Act

On September 9, 2021, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Illinois in the lawsuit entitled *United States* v. *Center Ethanol Company, LLC,* Case No. 3:21–cv–01115.

The United States filed a Complaint seeking civil penalties and injunctive relief from Defendant Center Ethanol Company, LLC (''Center Ethanol'') for alleged violations of the Clean Air Act, 42 U.S.C. 7401–7671q, at its former ethanol production facility in Sauget, Illinois (the ''Facility''). Among other things, the United States alleges that Center Ethanol has violated statutory and regulatory requirements limiting volatile organic compound emissions from the Facility, leak detection and repair (''LDAR'') monitoring requirements, as well as air pollution control efficiency requirements under Center Ethanol's 2006 Construction Permit for the Facility.

When the Complaint was filed, the United States also lodged a proposed Consent Decree that would settle the claims asserted in the Complaint. Because Center Ethanol has shut down the Facility, the proposed Consent Decree contains provisions related to its shutdown and deactivation. If Center Ethanol reactivates the Facility, the Consent Decree would require that Center Ethanol implement appropriate injunctive relief to control air pollutant emissions from the Facility, including an LDAR compliance and mitigation program. The Consent Decree also assess a $20,000 civil penalty based on a determination that Center Ethanol has a limited ability to pay.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Center Ethanol Company, LLC,* D.J. Ref. No. 90–5–2–1–12078. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.*

We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $18.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Patricia A. McKenna,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2021–19921 Filed 9–14–21; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 2 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference or videoconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate.

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Sherry Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *hales@arts.gov,* or call 202/682–5696.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion,

evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of September 10, 2019, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The upcoming meetings are:

American Rescue Plan Locals Subgranting (review of applications):

This meeting will be closed. *Date and time:* October 4, 2021, 1:00 p.m. to 3:00 p.m.

American Rescue Plan Locals Subgranting (review of applications):

This meeting will be closed. *Date and time:* October 4, 2021, 3:30 p.m. to 5:30 p.m.

Dated: September 10, 2021.

Sherry P. Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2021–19893 Filed 9–14–21; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 11006420; NRC–2021–0163]

Perma-Fix Northwest Richland, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Export license application; opportunity to provide comments, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering issuing an export license (XW028) requested by Perma-Fix Northwest Richland, Inc. (PFNW). On July 2, 2021, PFNW filed an application with the NRC for a license authorizing the export of low-level radioactive waste to Nordion (Canada) Inc., Canada. The NRC is providing notice of the opportunity to comment, request a hearing, and petition to intervene on PFNW's application.

DATES: Submit comments by October 15, 2021. A request for a hearing or a petition for leave to intervene must be filed by October 15, 2021.

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–2021–0163. 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 individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Hearing.Docket@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications 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: Gary Langlie, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9076, email: *Gary.Langlie@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to NRC–2021–0163 or Docket No. 11006420 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0163.
- *NRC's Public Website:* Go to *https://www.nrc.gov* and search for XW028, Docket No. 11006420, or Docket ID NRC–2021–0163.
- *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 export license application from PFNW is available in ADAMS under Accession No. ML21190A131.
- 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 NRC–2021–0163 or Docket No. 11006420 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. Discussion

On July 8, 2021, the NRC received an application from PFNW requesting a specific license to export low-level radioactive waste to Canada. The application seeks authorization to export no greater than 1,379,102 kilograms and 3.99 terabecquerels (TBq) of liquid low-level radioactive waste generated from medical isotope and radiopharmaceuticals production. The application requests an expiration date of December 1, 2026.

In accordance with section 110.70 paragraph (b) of title 10 of the *Code of Federal Regulations* (10 CFR) the NRC is providing notice of the receipt of the application; providing the opportunity to submit written comments concerning the application; and providing the opportunity to request a hearing or petition for leave to intervene, for a period of 30 days after publication of this notice in the **Federal Register**. A hearing request or petition for leave to intervene must include the information specified in 10 CFR 110.82(b). Any request for hearing or petition for leave

to intervene shall be served by the requestor or petitioner in accordance with 10 CFR 110.89(a), either by delivery, by mail, or filed with the NRC electronically in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.*

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 (1) request a digital identification (ID) certificate, which 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 petition 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.

The information concerning this application for an export license follows.

NRC EXPORT LICENSE APPLICATION

Application Information	
Name of Applicant	Perma-Fix Northwest Richland, Inc. (PFNW).
Date of Application	July 2, 2021.
Date Received	July 8, 2021.
Application No	XW028.
Docket No	11006420.
ADAMS Accession No	ML21190A131.
Description of Material	
Material Type	Radioactive material consisting of liquid waste generated from medical isotope and radiopharmaceuticals production. The treated waste exported to Canada consists mainly of thermal treatment residual (ash) and some non-combustible metal.
Total Quantity	Authorization to export a total maximum quantity of waste will not exceed 1,379,102 kilograms. The maximum isotopic activity returned will be 3.99 TBq. Radionuclides potentially present in the waste include: Cd-115, Co-60, Cr-51, Cu-64, In-115m, K-42, Mo-93m, Mo-99, Nb-91m, Nb-92m, Nb-95, Nb-95m, Nb-96, Re-188, Sb-122, Sb-124, Ta-182, Ta-183, Tc-99m, W-185, W-187, W-188, and Zr-89.
End Use	Disposal in Canada.
Country of Destination	Canada.

Dated: September 9, 2021.

For the Nuclear Regulatory Commission.

David L. Skeen,

Deputy Director, Office of International Programs.

[FR Doc. 2021–19840 Filed 9–14–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 11006421; NRC–2021–0164]

Perma-Fix Northwest Richland, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Export license application; opportunity to provide comments, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering issuing an export license (XW029) requested by Perma-Fix Northwest Richland, Inc. (PFNW). On July 2, 2021, PFNW filed an application with the NRC for a license authorizing the export of low-level radioactive waste to BWXT Medical, Ltd., Canada. The NRC is providing notice of the opportunity to comment, request a hearing, and petition to intervene on PFNW's application.

DATES: Submit comments by October 15, 2021. A request for a hearing or a petition for leave to intervene must be filed by October 15, 2021.

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–2021–0164. 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 individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Hearing.Docket@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications 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: Gary Langlie, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9076, email: *Gary.Langlie@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to NRC–2021–0164 or Docket No. 11006421 when contacting the NRC about the availability of information for this action. You may obtain publicly available information

related to this action by the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0164.

• *NRC's Public Website:* Go to *https://www.nrc.gov* and search for XW029, Docket No. 11006421, or Docket ID NRC–2021–0164.

• *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 export license application from PFNW is available in ADAMS under Accession No. ML21190A133.

• *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 NRC–2021–0164 or Docket No. 11006421 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. Discussion

On July 8, 2021, the NRC received an application from PFNW requesting a specific license to export low-level radioactive waste to Canada. The application seeks authorization to export no greater than 1,379,102 kilograms and 3.99 terabecquerels (TBq) of liquid low-level radioactive waste generated from medical isotope and radiopharmaceuticals production. The application requests an expiration date of December 1, 2026.

In accordance with section 110.70 paragraph (b) of title 10 of the *Code of Federal Regulations* (10 CFR) the NRC is providing notice of the receipt of the application; providing the opportunity to submit written comments concerning the application; and providing the opportunity to request a hearing or petition for leave to intervene, for a period of 30 days after publication of this notice in the **Federal Register**. A hearing request or petition for leave to intervene must include the information specified in 10 CFR 110.82(b). Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner in accordance with 10 CFR 110.89(a), either by delivery, by mail, or filed with the NRC electronically in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.*

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 (1) request a digital identification (ID) certificate, which 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 petition 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.

The information concerning this application for an export license follows.

NRC Export License Application

Application Information	
Name of Applicant	Perma-Fix Northwest Richland, Inc. (PFNW).
Date of Application	July 2, 2021.
Date Received	July 8, 2021.
Application No	XW029.
Docket No	11006421.
ADAMS Accession No	ML21190A133.
Description of Material	
Material Type	Radioactive material consisting of liquid waste generated from medical isotope and radiopharmaceuticals production. The treated waste exported to Canada consists mainly of thermal treatment residual (ash) and some non-combustible metal.
Total Quantity	Authorization to export a total maximum quantity of waste will not exceed 1,379,102 kilograms. The maximum isotopic activity returned will be 3.99 TBq. Radionuclides potentially present in the waste include: Cd-115, Co-60, Cr-51, Cu-64, In-115m, K-42, Mo-93m, Mo-99, Nb-91m, Nb-92m, Nb-95, Nb-95m, Nb-96, Re-188, Sb-122, Sb-124, Ta-182, Ta-183, Tc-99m, W-185, W-187, W-188, and Zr-89.
End Use	Disposal in Canada.
Country of Destination	Canada.

Dated: September 9, 2021.

For the Nuclear Regulatory Commission.

David L. Skeen,

Deputy Director, Office of International Programs.

[FR Doc. 2021–19841 Filed 9–14–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482; NRC–2020–0110]

Issuance of Exemption in Response to COVID–19 Public Health Emergency

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) issued one exemption in August 2021 in response to a request from one licensee for relief due to the coronavirus 2019 disease (COVID–19) public health emergency (PHE). The exemption affords the licensee temporary relief from certain requirements under NRC regulations.

DATES: On August 25, 2021, the NRC granted one exemption in response to a request submitted by one licensee on July 29, 2021, as supplemented by letter dated August 12, 2021.

ADDRESSES: Please refer to Docket ID NRC–2020–0110 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0110. 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 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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request for copies of documents to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: James Danna, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7422, email: *James.Danna@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On August 25, 2021, the NRC granted one exemption in response to a request submitted by one licensee dated July 29, 2021, as supplemented by letter dated August 12, 2021. The exemption temporarily allows the licensee to deviate from certain requirements of chapter I of title 10 of the *Code of Federal Regulations* (10 CFR), part 50, appendix E, ''Emergency Planning and Preparedness for Production and Utilization Facilities,'' section IV.F, ''Training.''

The exemption grants Wolf Creek Nuclear Operating Corporation (for Wolf Creek Generating Station, Unit 1), a schedular exemption from the offsite biennial emergency preparedness (EP) exercise requirement, allowing it to postpone the calendar year 2021 full-participation biennial EP exercise until November 30, 2022, or when the required exercise is conducted in calendar year 2022, whichever occurs first. The exemption affords this licensee temporary relief from the requirements of 10 CFR part 50, appendix E, regarding offsite response organization (ORO) participation in the biennial EP exercise. The exemption will not adversely affect the emergency response capability of the facility because the licensee has conducted numerous drills, exercises, and other training activities that have exercised the licensee's emergency response strategies since the last evaluated biennial EP exercise and that State, county, and local OROs have participated therein.

The table in this notice provides transparency regarding the number and type of exemptions the NRC has issued. Additionally, the NRC publishes tables of approved regulatory actions related to the COVID–19 PHE on its public website at *https://www.nrc.gov/about-nrc/covid-19/reactors/licensing-actions.html.*

II. Availability of Documents

The table in this notice provides the facility name, docket number, document description, and ADAMS accession number for the exemption issued. Additional details on the exemption issued, including the exemption request submitted by the licensee and the NRC's decision, are provided in the exemption approval listed in the table in this notice. For additional directions on accessing information in ADAMS, see the **ADDRESSES** section of this document.

WOLF CREEK GENERATING STATION, UNIT 1, DOCKET NO. 50–482

Document description	ADAMS Accession No.
Wolf Creek Nuclear Operating Corporation—Docket No. 50–482: One-Time Request for Exemption from the Biennial Emergency Preparedness, dated July 29, 2021	ML21210A450
Wolf Creek Nuclear Operating Corporation—Docket No. 50–482: Supplement to One-Time Request for Exemption from the Biennial Emergency Preparedness, dated August 12, 2021	ML21224A225
Wolf Creek Generating Station, Unit 1—Temporary Exemption from Requirements of 10 CFR part 50, appendix E, sections IV.F.2.B and IV.F.2.C (EPID L–2021–LLE–0036 [COVID–19]), dated August 25, 2021	ML21225A024

Dated: September 9, 2021.

For the Nuclear Regulatory Commission.

James G. Danna,

Chief, Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–19824 Filed 9–14–21; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2020–178; CP2020–180]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 17, 2021.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s):* CP2020–178; *Filing Title:* Notice of the United States Postal Service of Filing Modification One to Global Reseller Expedited Package 2 Negotiated Service Agreement; *Filing Acceptance Date:* September 9, 2021; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Gregory Stanton; *Comments Due:* September 17, 2021.

2. *Docket No(s):* CP2020–180; *Filing Title:* Notice of the United States Postal Service of Filing Modification One to Global Reseller Expedited Package 2 Negotiated Service Agreement; *Filing Acceptance Date:* September 9, 2021; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Gregory Stanton; *Comments Due:* September 17, 2021.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2021–19888 Filed 9–14–21; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92905; File No. SR–NASDAQ–2021–040]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Establish the "Extended Trading Close" and a New "Extended Trading Close" Order Type

September 9, 2021.

On July 12, 2021, The Nasdaq Stock Market LLC filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add Equity 4, Rule 4755 and amend Equity 4, Rules 4702 and 4703 to establish the ''Extended Trading Close,'' as well as the ''ETC Eligible LOC'' and ''Extended Trading Close'' order types. The proposed rule change was published for comment in the **Federal Register** on July 28, 2021.[3]

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is September 11, 2021.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comment letter received.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates October 26, 2021, as the date

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92466 (July 22, 2021), 86 FR 40667. The comment letter received on the proposed rule change is available on the Commission's website at: *https://www.sec.gov/comments/sr-nasdaq-2021-040/srnasdaq2021040.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File Number SR–NASDAQ–2021–040).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19850 Filed 9–14–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92918; File No. SR–ICC–2021–017]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the ICE Clear Credit Operating Agreement and Governance Playbook

September 9, 2021.

I. Introduction

On July 20, 2021, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend and restate ICC's Fifth Amended and Restated Operating Agreement (the ''Operating Agreement'') and make changes to the ICE Clear Credit LLC Governance Playbook (the ''Governance Playbook''). The proposed rule change was published for comment in the **Federal Register** on July 30, 2021.[3] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

A. Operating Agreement

The proposed rule change would amend and restate the Operating Agreement to (i) reduce the number of managers on ICC's Board of Managers (the ''Board'') designated by its parent company, ICE US Holding Company L.P. (''Parent''); (ii) remove certain outdated provisions; and (iii) incorporate certain prior amendments and make other non-substantive updates. After making such amendments with the proposed rule change, ICC would adopt the amended Operating Agreement as the Sixth Amended and Restated Operating Agreement.[4]

i. Reduction in the Number of Managers Designated by Parent

Currently, the Operating Agreement provides that the Board will consist of, among other managers, four managers elected by Parent and at all times be independent in accordance with the requirements of each of the New York Stock Exchange listing standards, the Act, and ICE's Board of Director Governance Principles (collectively, the ''Parent Independent Managers''). The proposed rule change would reduce the number of Parent Independent Managers from four to three.

Similarly, the Operating Agreement currently provides that the Board will consist of, among other managers, three other managers elected by Parent (collectively, the ''Parent Non-Independent Managers''). The proposed rule change would reduce the number of Parent Non-Independent Managers from three to two.

As part of these changes, the proposed rule change would also remove the names of the Parent Independent Managers and Parent Non-Independent Managers. The Operating Agreement currently lists out the names of the individual Parent Independent Managers and Parent Non-Independent Managers. The proposed rule change would remove the names of these individuals and instead would refer to the Parent Independent Managers and Parent Non-Independent Managers only.

Finally, consistent with these changes, the proposed rule change would reduce the total number of managers on the Board from eleven to nine, reflecting one less Parent Independent Manager and one less Parent Non-Independent Manager.

ii. Removal of Outdated Provisions

The proposed rule change would next remove outdated provisions related to the conversion of ICC from a New York trust company to a Delaware limited liability company in 2011 and ICC's operation prior to the conversion. The Operating Agreement currently describes how ICC made such a conversion and how ICC operated prior to the 2011 conversion. The proposed rule change would remove these provisions as they are outdated and no longer need to be included in the Operating Agreement. The proposed rule change would update related defined terms and references as needed.

iii. Prior Amendments and Other Updates

Finally, the proposed rule change would make certain other amendments and updates to the Operating Agreement. First, the proposed rule change would update Section 3.03 to reflect prior amendments that ICC made to the Operating Agreement without filing a proposed rule change or restating the Operating Agreement. Section 3.03 provided that the Board shall meet (i) in person no less frequently than quarterly and (ii) telephonically no less frequently than two times per calendar year. ICC previously amended this provision to provide instead that the Board will meet no less frequently than quarterly at such time and place as the Chair shall determine, and may meet more frequently (either in person or telephonically) as circumstances dictate. ICC also previously amended this provision to remove the requirement that the Board meet telephonically no less than twice per calendar year. Although ICC previously amended the Operating Agreement to make these changes, it did not file a proposed rule change or restate the Operating Agreement at such time. Thus, the proposed rule change would reflect these prior amendments and ensure their inclusion in the Sixth Amended and Restated Operating Agreement.

Second, throughout the Operating Agreement, the proposed rule change would correct outdated references to the name, jurisdiction of organization, and governing document of Parent and certain related legal entities and would replace references to the Chief Executive Officer of ICC with references to the President (which is the correct title). ICC previously amended the Operating Agreement to include these changes but, like the changes to Board meetings described immediately above, did not file a proposed rule change and did not restate the Operating Agreement after making these changes. Thus, the proposed rule change would reflect these prior amendments and ensure their inclusion in the Sixth Amended and Restated Operating Agreement.

Third, the proposed rule change would update the contact information and addresses listed in Section 7.01 that are used for providing notice to ICC and Parent under the Operating Agreement.

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICE Clear Credit Operating Agreement and Governance Playbook, Exchange Act Release No. 92504 (July 26, 2021); 86 FR 41123 (July 30, 2021) (SR–ICC–2021–017) (''Notice'').

[4] This description is substantially excerpted from the Notice. Capitalized terms not otherwise defined herein have the meanings assigned to them in the Operating Agreement or ICE Clear Credit Rulebook, as applicable.

Fourth, the proposed rule change would update the contact information and address for ICC's registered office and agent in Delaware listed in Section 2.06.

Fifth, the proposed rule change would update references throughout the Operating Agreement to refer to the Sixth Amended and Restated Operating Agreement or the Fifth Amended and Restated Operating Agreement, as needed in the context of the section.

Sixth, the proposed rule change would update the definition of ICE's Board of Director Governance Principles to refer to the current Independence Policy of the Board of Directors of ICE.

Finally, the proposed rule change would correct minor typographical and grammatical errors.

B. Governance Playbook

The proposed rule change would update the Governance Playbook to reflect the changes to the Operating Agreement described above. First, the proposed rule change would update Section III.A to reflect the revised composition of the Board—nine total managers with three Parent Independent Managers and two Parent Non-Independent Managers. The proposed rule change would make a similar change to Section III.F.

Second, the proposed rule change would update certain references found in Footnote 1. Footnote 1 describes an aspect of the partnership agreement of ICC's Parent. The proposed rule change would update the name of the partnership agreement to reflect the current name of that agreement and would correct the description of Parent's jurisdiction of organization.

Third, the proposed rule change would update Footnote 5 to link to the current Independence Policy of the Board of Directors of ICE, similar to the change to the Operating Agreement discussed above amending the definition of ICE's Board of Director Governance Principles to refer to the current Independence Policy of the Board of Directors of ICE.

Finally, the proposed rule change would make a minor revision to Section III.C. That section currently provides that upon the resignation of a manager, ICC's legal group is responsible for obtaining a resignation letter. The proposed rule change would revise this provision to provide that ICC's legal group is responsible for reviewing a resignation letter if received, rather than obtaining one. While it is common practice for a resigning manager to submit a resignation letter, there is no overall requirement that a resigning manager submit a resignation letter, and thus the legal group would no longer be responsible for obtaining one.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[5] After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC. In particular, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[6] and Rules 17Ad–22(e)(2)(i) and (v).[7]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible.[8]

The Commission believes that the changes discussed in Part II.A.i above would improve the operation of the Board and clarity of the Operating Agreement. In particular, the Commission believes that reducing the overall number of managers from eleven to nine, by reducing the number of Parent Independent Managers from four to three and reducing the number of Parent Non-Independent Managers from three to two, would help to ensure the efficient operation of the Board and clarify the extent of Parent's ability to appoint managers. Moreover, the Commission believes that removing the names of the individual Parent Independent Managers and Parent Non-Independent Managers would help to ensure that ICC is not required to amend the Operating Agreement due to changes in such managers, thereby helping to ensure the efficiency and flexibility of the Operating Agreement.

Similarly, the Commission believes that removal of the outdated provisions related to the conversion of ICC and its operation prior to 2011, as discussed in Part II.A.ii above would help to promote the promote consistency and readability of the Operating Agreement.

Moreover, the Commission believes that the other changes to the Operating Agreement discussed in Part II.B.iii above would help to ensure the clarity and efficient operation of the Operating Agreement. Specifically, the Commission believes that requiring the Board to meet no less frequently than quarterly at such time and place as determined by the Chair and authorizing the Board to meet more frequently (either in person or telephonically) as circumstances dictate, would help to ensure the efficient operation of the Board and provide flexibility as to how and when the Board meets. Similarly, the Commission believes that correcting (i) outdated references to the name, jurisdiction of organization, and governing document of Parent and certain related legal entities; (ii) references to the Chief Executive Officer of ICC so they refer instead to the President; (iii) references to the Sixth Amended and Restated Operating Agreement and the Fifth Amended and Restated Operating Agreement; (iv) the definition of ICE's Board of Director Governance Principles to refer to the current Independence Policy of the Board of Directors of ICE; and (v) minor typographical and grammatical errors would help to ensure that the Operating Agreement is clear, understandable, free of errors, and correctly applied. Updating the contact information and addresses that are used for providing notice to ICC and Parent and the contact information and address for ICC's registered office and agent in Delaware would similarly help to ensure that the Operating Agreement is clear and correctly applied.

For similar reasons, the Commission believes that updating the Governance Playbook to reflect these changes to the Operating Agreement, as discussed in Part II.B above, would help to ensure the clarity and efficient operation of the Governance Playbook. In particular, the Commission believes that updating Section III.A to reflect the revised composition of the Board—nine total managers with three Parent Independent Managers and two Parent Non-Independent Managers—would, for the reasons discussed above, help to ensure the efficient operation of the Board. Moreover, the Commission believes that updating the description related to Parent in Footnote 1 and the link to the current Independence Policy of the Board of Directors of ICE in Footnote 5 would help to ensure that the Governance Playbook is clear, understandable, and correctly applied.

[5] 15 U.S.C. 78s(b)(2)(C).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 240.17Ad–22(e)(2)(i), (v).

[8] 15 U.S.C. 78q–1(b)(3)(F).

Finally, the Commission believes that revising Section III.C to specify that ICC's legal group is responsible for reviewing a resignation letter if received, rather than obtaining one, would clarify the role of ICC's legal group.

Thus, the Commission believes that all of these changes, as discussed above, would help to ensure the efficient operation of the Board, Operating Agreement, and Governance Playbook and help to ensure the Operating Agreement and Governance Playbook are clear, free of errors, understandable, and correctly applied. Because ICC operates pursuant to Board oversight and the governance set forth in the Operating Agreement and Governance Playbook, the Commission believes that these improvements would thereby generally help to improve the efficiency and consistency of ICC's operations. The Commission also believes that in so doing, these improvements would thereby help to ensure that ICC is able to promptly and accurately clear and settle securities transactions and assure the safeguarding of securities and funds in ICC's custody or control or for which it is responsible. Therefore, the Commission finds the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.[9]

B. Consistency With Rule 17Ad–22(e)(2)(i) and (v)

Rules 17Ad–22(e)(2)(i) and (v) require that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility.[10] As discussed above, the Commission believes that the changes to the Operating Agreement and Governance Playbook would help to ensure that both documents are clear, understandable, and free from error. Because ICC's governance operates pursuant to the Operating Agreement and Governance Playbook, the Commission therefore believes the proposed rule change would help to ensure that ICC's governance arrangements are clear. Moreover, the Commission believes that revising Section III.C of the Governance Playbook to specify that ICC's legal group is responsible for reviewing a resignation letter if received, rather than obtaining one, would specify a clear and direct responsibility of the legal group. Therefore, the Commission finds the proposed rule change is consistent with Rule 17Ad-22(e)(2)(i) and (v).[11]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act[12] and Rules 17Ad–22(e)(2)(i) and (v).[13]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[14] that the proposed rule change (SR–ICC–2021–017) be, and hereby is, approved.[15]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19863 Filed 9–14–21; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 17 CFR 240.17Ad–22(e)(2)(i), (v).

[11] 17 CFR 240.17Ad–22(e)(2)(i), (v).

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(2)(i), (v).

[14] 15 U.S.C. 78s(b)(2).

[15] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92916; File No. SR–C2–2021–013]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Certain Corrections to the Rules

September 9, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 7, 2021, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') proposes to make certain corrections to the Rules. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make nonsubstantive cleanup changes to its Cboe C2 Exchange Rulebook (''Rulebook'') in order to remove inapplicable and obsolete terms.

Specifically, the proposed rule change deletes the definition of ''L'' Capacity code from Rule 1.1, which currently provides that L Capacity code applies to the account of non-Trading Permit Holder affiliate. The Exchange notes that this Capacity code is not applicable to trading on C2 and only applicable to trading on the Exchange's affiliated options exchange, Cboe Exchange, Inc. (''Cboe Options''), from which the Exchange's current definition of ''L'' Capacity code was inadvertently copied.[5] Further, the proposed rule change deletes the term ''Voluntary Professional Customer'' from Rule 6.5. As of 2019, that Capacity designation is no longer available on C2 Exchange and the Exchange removed the term from its Rulebook. The proposed rule change merely removes the term from Rule 6.5,

[5] *See* Securities Exchange Release No. 83214 (May 11, 2018), 83 FR 22796 (May 16, 2018) (SR–C2–2018–005).

which was inadvertently left in the Rulebook.[6]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, will protect investors and the public interest by removing inapplicable and obsolete terms within the Rules. Specifically, by removing terms that reference Capacities that are not available on the Exchange, the proposed rule change is designed to protect investors by making the Rules more accurate, thereby mitigating any potential investor confusion. The proposed rule change will have no impact on trading on the Exchange, as the proposed rule change is nonsubstantive in nature.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended as a competitive filing, but rather simply updates the Rules to remove inapplicable and obsolete terms that inadvertently remain in the Rulebook. The proposed rule change makes no substantive changes to the Rules, and thus will have no impact on trading on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[12] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed rule change will remove inapplicable and obsolete terms within the Rules. The Exchange notes that by removing terms that reference Capacities that are not available on the Exchange, the proposed rule change is designed to protect investors by making the Rules more accurate, thereby mitigating any potential investor confusion. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change is nonsubstantive in nature and makes the Exchange's rules accurate by removing inapplicable and obsolete terms. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number* SR–C2–2021–013 *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–C2–2021–013. 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

[6] *See.id.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–C2–2021–013 and should be submitted on or before October 6, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19861 Filed 9–14–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92911; File No. SR–NASDAQ–2021–067]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Expiration Date of the Temporary Amendments Concerning Video Conference Hearings

September 9, 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 August 30, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. 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 extend the expiration date of the temporary amendments in SR–NASDAQ–2020–076 from August 31, 2021, to December 31, 2021.[4] The proposed rule change would not make any changes to the text of the Exchange rules.

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 continue to harmonize Exchange Rules 1015, 9261, 9524 and 9830 with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA'') to its Rules 1015, 9261, 9524 and 9830 in response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities. The Exchange originally filed proposed rule change SR–NASDAQ–2020–076, which allows the Exchange's Office of Hearing Officers (''OHO'') and the Exchange Review Council (''ERC'') to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. In April 2021, the Exchange filed a proposed rule change, SR–NASDAQ–2021–033, to extend the expiration date of the temporary amendments in SR–NASDAQ–2020–076 from April 30, 2021, to August 31, 2021.[5] While there are signs of improvement, much uncertainty remains for the coming months. The emergence of the Delta variant, dissimilar vaccination rates throughout the United States, and the uptick in transmissions in many locations indicate that COVID–19 remains an active and real public health concern.[6] Based on its assessment of current COVID–19 conditions and the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and corresponding restrictions,[7] the Exchange has determined that there is a continued need for temporary relief for several months beyond August 31, 2021. Accordingly, the Exchange proposes to extend the expiration date of the temporary rule amendments in SR–NASDAQ–2020–076 from August 31, 2021, to December 31, 2021.

On November 5, 2020, the Exchange filed, and subsequently extended to August 31, 2021, SR–NASDAQ–2020–076, to temporarily amend Exchange Rules 1015, 9261, 9524 and 9830 to grant OHO and the ERC authority[8] to conduct hearings in connection with appeals of Membership Application Program decisions, disciplinary actions, eligibility proceedings and temporary

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] If the Exchange seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond December 31, 2021, the Exchange will submit a separate rule filing to further extend the temporary extension of time. The amended Exchange rules will revert to their original form at the conclusion of the temporary relief period and any extension thereof.

[5] *See* Securities Exchange Act Release No. 91763 (May 4, 2021), 86 FR 25055 (May 10, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–NASDAQ–2021–033).

[6] For example, President Joe Biden on July 29, 2021, announced several measures to increase the number of people vaccinated against COVID–19 and to slow the spread of the Delta variant, including strengthening safety protocols for federal government employees and contractors. *See https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/29/fact-sheet-president-biden-to-announce-new-actions-to-get-more-americans-vaccinated-and-slow-the-spread-of-the-delta-variant/.*

[7] For instance, the Centers for Disease Control and Prevention on July 27, 2021, began recommending that fully vaccinated people wear a mask in public indoor settings in areas of substantial or high transmission and noted that fully vaccinated people might choose to wear a mask regardless of the level of transmission, particularly if they are immunocompromised or at increased risk for severe disease from COVID–19. *See https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html.* Also, several cities, including Atlanta, Baltimore, Los Angeles, New Haven and San Francisco, have recently reinstated their mask mandates.

[8] For OHO hearings under Exchange Rules 9261 and 9830, the proposed rule change temporarily grants authority to the Chief or Deputy Chief Hearing Officer to order that a hearing be conducted by video conference. For ERC hearings under Exchange Rules 1015 and 9524, this temporary authority is granted to the ERC or relevant Subcommittee.

and permanent cease and desist orders by video conference, if warranted by the COVID–19-related public health risks posed by an in-person hearing.[9]

As set forth in the previous filings, the Exchange also relies on COVID–19 data and the guidance issued by public health authorities to determine whether the current public health risks presented by an in-person hearing may warrant a hearing by video conference.[10] Based on that data and guidance, the Exchange does not believe the COVID–19-related health concerns necessitating this relief will meaningfully subside by August 31, 2021, and has determined that there will be a continued need for this temporary relief for several months beyond that date. Accordingly, the Exchange proposes to extend the expiration date of the temporary rule amendments originally set forth in SR–NASDAQ–2020–076 from August 31, 2021, to December 31, 2021. The extension of these temporary amendments allowing for specified OHO and ERC hearings to proceed by video conference will allow the Exchange's critical adjudicatory functions to continue to operate effectively in these extraordinary circumstances—enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets—while also protecting the health and safety of hearing participants.

The Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by continuing to provide greater harmonization between the Exchange rules and FINRA rules of similar purpose,[13] resulting in less burdensome and more efficient regulatory compliance.

The proposed rule change, which extends the expiration date of the temporary amendments to the Exchange rules set forth in SR–NASDAQ–2020–076, will continue to aid the Exchange's efforts to timely conduct hearings in connection with its core adjudicatory functions. Given the current and frequently changing COVID–19 conditions and the uncertainty around when those conditions will see meaningful, widespread, and sustained improvement, without this relief allowing OHO and ERC hearings to continue to proceed by video conference, the Exchange might be required to postpone some or almost all hearings indefinitely. The Exchange must be able to perform its critical adjudicatory functions in order to fulfill its statutory obligations to protect investors and maintain fair and orderly markets. As such, this relief is essential to the Exchange's ability to fulfill its statutory obligations and allows hearing participants to avoid the serious COVID–19-related health and safety risks associated with in-person hearings.

Among other things, this relief will allow OHO to conduct temporary cease and desist proceedings by video conference so that the Exchange can take immediate action to stop ongoing customer harm and will allow the ERC to timely provide members, disqualified individuals and other applicants an approval or denial of their applications. As set forth in detail in SR–NASDAQ–2020–076, this temporary relief allowing OHO and ERC hearings to proceed by video conference accounts for fair process considerations and will continue to provide fair process while avoiding the COVID–19-related public health risks for hearing participants. Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the temporary proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As set forth in SR–NASDAQ–2020–076, the proposed rule change is intended solely to extend temporary relief necessitated by the continued impacts of the COVID–19 outbreak and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to its operations, including its critical adjudicatory processes, and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on August 31, 2021.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has indicated that the proposed rule change to extend the expiration date will continue to prevent unnecessary impediments to its operations, including its critical adjudicatory processes, and its ability to

[9] *See* Securities Exchange Act Release No. 90390 (November 10, 2020), 85 FR 73302 (November 17, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–NASDAQ–2020–076); Securities Exchange Act Release No. 90774 (December 22, 2020), 85 FR 86614 (December 30, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–NASDAQ–2020–092); *supra* note 5.

[10] As noted in SR–NASDAQ–2020–076, the temporary proposed rule change grants discretion to OHO and the ERC to order a video conference hearing. In deciding whether to schedule a hearing by video conference, OHO and the ERC may consider a variety of other factors in addition to COVID–19 trends.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *See* Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR–FINRA–2021–019).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on August 31, 2021.[18] Importantly, extending the relief provided in SR–NASDAQ–2021–033 immediately upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of its employees.[19] The Commission also notes that this proposal extends without change the temporary relief previously provided by SR–NASDAQ–2021–033.[20] As proposed, the changes would be in place through December 31, 2021 and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[21] For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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–2021–067 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–2021–067. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2021–067 and should be submitted on or before October 6, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19856 Filed 9–14–21; 8:45 am]

BILLING CODE 8011–01–P

[18] *See supra* Item II.

[19] *See* FINRA Filing, 86 FR at 47171 (noting the same in granting FINRA's request to waive the 30-day operative delay so that SR–FINRA–2021–019 would become operative immediately upon filing).

[20] *See supra* note 5.

[21] *See supra* note 4. As noted above, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond December 31, 2021, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34373; File No. 812–15230]

High Income Securities Fund

September 9, 2021.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act to permit a registered closed-end investment company to make periodic distributions of long-term capital gains more frequently than permitted by section 19(b) or rule 19b–1.

Applicant: High Income Securities Fund, a Massachusetts business trust that is an internally managed registered closed-end diversified management investment company (the ''Fund'' or the ''Applicant'').[1]

Filing Dates: The application was filed on May 13, 2021, and amended on July 7, 2021.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on October 4, 2021, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: c/o Thomas R. Westle, Esq., Blank Rome LLP, *twestle@blankrome.com.*

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 551–6876 or Trace W. Rakestraw,

[1] Applicants request that the order also apply to any successor in interest to the Fund. A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Summary of the Application:

1. Section 19(b) of the Act generally makes it unlawful for any registered investment company to make long-term capital gains distributions more than once every twelve months. Rule 19b–1 under the Act limits to one the number of capital gain dividends, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986 (''Code,'' and such dividends, ''distributions''), that a registered investment company may make with respect to any one taxable year, plus a supplemental distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Applicant believes that investors in certain closed-end funds may prefer an investment vehicle that provides regular current income through a fixed distribution policy (''Distribution Policy''). Applicant proposes that the Fund be permitted to adopt a Distribution Policy, pursuant to which the Fund would distribute periodically to its shareholders a fixed percentage of the market price of the Fund's common shares at a particular point in time or a fixed percentage of net asset value (''NAV'') at a particular time or a fixed amount per share of common shares, any of which may be adjusted from time to time.

3. Applicant requests an order under section 6(c) of the Act granting an exemption from section 19(b) of the Act and rule 19b–1 to permit a Fund to distribute periodic capital gain dividends (as defined in section 852(b)(3)(C) of the Code) as frequently as twelve times in any one taxable year in respect of its common shares (and as often as specified by, or determined in accordance with the terms of, any preferred shares issued by the Fund).[2] Section 6(c) of the Act provides, in relevant part, that the Commission may exempt any person or transaction from any provision of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicant states that any order granting the requested relief will be subject to the terms and conditions stated in the application, which generally are designed to address the concerns underlying section 19(b) and rule 19b–1, including concerns about proper disclosures and shareholders' understanding of the source(s) of a Fund's distributions and concerns about improper sales practices. Among other things, such terms and conditions require that (1) the board of trustees of the Fund (the ''Board'') request and evaluate, and the Fund will furnish, such information as may be reasonably necessary to make an informed determination of whether to adopt the proposed Distribution Policy and that the Board periodically review the amount of the distributions in light of the investment experience of the Fund, and (2) that the Fund's shareholders receive appropriate disclosures concerning the distributions.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19820 Filed 9–14–21; 8:45 am]

BILLING CODE 8011–01–P

[2] Although the Fund does not currently intend to issue preferred shares, the board may authorize the issuance of preferred shares in the future.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92917; No. SR–NYSEArca–2021–79]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule

September 9, 2021.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 1, 2021, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (''Fee Schedule'') regarding certain pricing incentives. The Exchange proposes to implement the fee change effective September 1, 2021. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Fee Schedule to modify certain pricing incentives. Specifically, the Exchange proposes to modify the ''Discount in Take Liquidity Fees for Professional Customer and Non-Customer Liquidity Removing Interest,'' the ''Market Maker Penny and SPY Posting Credit Tiers,'' and the ''Market Maker Incentive For Non-Penny Issues,'' as described below. The Exchange proposes to implement the fee change effective September 1, 2021.

Discount in Take Liquidity Fees for Professional Customers and Non-Customer Liquidity Removing Interest (the ''Take Fee Discount'')

If an OTP Holder or OTP Firm (collectively ''OTP Holders'') executes a transaction that removes or ''takes'' liquidity on the Exchange, the OTP Holder is charged a ''Take Liquidity'' fee (referred to herein as ''Take Fees'') and such liquidity may be referred to as ''Liquidity Removing'' or liquidity

taking.[4] To offset such costs and to encourage market participants to direct order flow to the Exchange, the Exchange offers, among other incentives, the Take Fee Discounts for executions in Penny Issues.

The Exchange proposes to modify one of the Take Fee Discounts. Under the current Fee Schedule, OTP Holders that execute at least 0.80% of Total Industry Customer equity and ETF option average daily volume (''TCADV'')[5] from Customer posted interest in all issues, plus executed ADV of 0.30% ADV of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market, may qualify for a $0.04 per contract Take Fee Discount on liquidity-taking executions by Professional Customers or Non-Customers in Penny Issues.

The Exchange proposes that this $0.04 Take Fee Discount would apply only if the executing buyer and seller in the qualifying transaction are either the same OTP Holder or an Affiliated or Appointed OFP or Appointed MM of the OTP Holder (collectively referred to as ''Affiliates'' herein), otherwise, the Take Fee Discount would be $0.03 (instead of $0.04). In other words, when an OTP Holder or its Affiliate trades against itself (*e.g.,* Firm 1 MM trades against Firm 1 Customer or Firm 1 MM trades against Customer of an Affiliate of Firm 1), the $0.04 Take Fee Discount would apply. If, however, the OTP Holder trades against another OTP Holder (*e.g.,* Firm 1 MM trades against Firm 2 Customer), the $0.03 Take Fee Discount would apply. The Exchange proposes to add language to the Fee Schedule that adds this provision.

The Exchange believes the proposed fee change is reasonable because the Exchange already offers certain transaction fee discounts to OTP Holders and their Affiliates that aggregate their order flow on these types of transactions.[6] The Exchange also notes that this proposed change is being made for business and competitive reasons to align Exchange fee incentives with those charged by other options exchanges.[7] The Exchange believes that it will still remain highly competitive and that its Take Fees Discounts, as modified, would continue to attract order flow to the Exchange.

Market Maker Incentive for Non-Penny Issues and Market Maker Penny and SPY Posting Credit Tiers (the ''Market Maker Posting Tiers'')

The Exchange also proposes to modify the criteria for Market Makers to qualify for enhanced posting credits in Penny Issues and SPY (*i.e.,* the ''Market Maker Posting Tiers''). Specifically, to encourage Market Makers and Lead Market Makers (collectively, ''Market Makers'') to direct orders and quotes to the Exchange, this proposed rule change would modify one of the alternative qualification bases for achieving the Super Tier by lowering the minimum volume threshold and limiting which interest can qualify for that threshold. Currently, to qualify for the Super Tier, OTP Holders must execute at least 1.60% of TCADV from all interest in all issues, all account types, with at least 0.80% TCADV from posted interest in all issues. The Exchange proposes to modify this qualification bases such that to qualify, an OTP Holder would have to execute least 1.60% of TCADV from all interest in all issues, all account types (which would be unchanged), with at least 0.15% TCADV from Market Maker posted interest in all issues. The per contract credit for OTP Holders that achieve the Super Tier remains unchanged (*i.e.,* $0.37, and $0.39 per contract credit, respectively, for electronic executions of Market Maker Posted Interest in Penny Issues excluding SPY and for such executions in SPY).

The Exchange believes that the proposed change would continue to attract order flow to the Exchange because the limitation on the qualifying interest (from all posted interest to Market Maker posted interest) would be offset by the significantly reduced volume requirement (from 0.80% to 0.15%). In addition, notwithstanding the proposed modification to the Super Tier, OTP Holders are still eligible to qualify for the existing alternative (and unchanged) Super Tier qualification basis for executions in Penny Issues and SPY.[8] By continuing to provide such alternative methods to qualify for Take Fee Discounts, the Exchange believes the opportunities to qualify for credits is increased, which benefits all participants through increased volume to the Exchange.

Market Maker Incentive for Non-Penny Issues (the ''Market Maker Non-Penny Incentive'')

To mirror the proposed change to the Super Tier (of the Market Maker Posting Tiers) the Exchange also proposes to modify one of the alternative qualification bases to achieve the Market Maker Non-Penny Incentive. Specifically, under the current Fee Schedule, OTP Holders must execute at least 1.60% of TCADV from all orders in all issues, all account types, with at least 0.80% TCADV from posted interest in all issues. First, the Exchange proposes to replace reference to ''TCADV from all orders'' with ''TCADV from all interest'' to make clear that liquidity may include orders or quotes. Next, the Exchange proposes to modify this qualification bases such that (identical to the proposed change to the Super Tier), to qualify, an OTP Holder would have to execute least 1.60% of TCADV from all interest in all issues, all account types, with at least 0.15% TCADV from Market Maker posted interest in all issues. The $0.55 per contract credit for OTP Holders that achieve the minimum volume threshold remains unchanged.

The Exchange believes that the proposed change would continue to attract order flow to the Exchange because the limitation on the qualifying interest (from all posted interest to Market Maker posted interest) is offset by the significantly reduced volume requirement (from 0.80% to 0.15%). In addition, notwithstanding this proposed modification, OTP Holders are still eligible to qualify for the existing alternative (and unchanged) Market

[4] *See* Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, TRANSACTION FEE FOR ELECTRONIC EXECUTIONS—PER CONTRACT (setting forth a per contract Take Fee of $0.50 for such Penny executions in Professional Customer, Firm, Broker Dealer, and Market Maker range as compared to a per contract take fee of $0.49 for such Penny executions in the Customer range).

[5] *See* Fee Schedule, Endnote 8 (providing that TCADV ''includes OCC calculated Customer volume of all types, including Complex Order Transactions and QCC transactions, in equity and ETF options'').

[6] *See, e.g.,* Fee Schedule, CUSTOMER PENNY POSTING CREDIT TIERS and Endnote 15 (providing per contract credits to OTP Holders and Affiliates that meet certain minimum volume thresholds) and MARKET MAKER PENNY AND SPY POSTING CREDIT TIERS (same).

[7] *See, e.g.,* MIAX Pearl Options Fee Schedule, available at *https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Pearl_Options_Fee_Schedule_08122021.pdf* (providing a lower ''take rate'' for ''executed MIAX Pearl Market Maker Orders when the executing buyer and seller are the same Member or Affiliates'' and, a higher ''take rate'' for ''executed MIAX Pearl Market Maker Orders when the executing buyer and seller are *not* the same Member or Affiliates'') (emphasis added); Nasdaq Options 7 Pricing Schedule, Section 2 Nasdaq Options Market—Fees and Rebates, available at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/nasdaq-options-7 (providing that Nasdaq participants that add 1.30% of Customer, Professional, Firm, Broker-Dealer or Non-NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of TCADV per day in a month will pay ''a $0.48 per contract Penny Symbols Fee for Removing Liquidity when the Participant is (i) both the buyer and the seller or (ii) the Participant removes liquidity from another Participant under Common Ownership'', otherwise such participants pay $0.50 per contract on such interest).*

[8] OTP Holder may (still) qualify for the Super Tier by executing at least 0.55% of TCADV from Market Maker posted interest in all issues.

Maker Non-Penny Incentive qualification basis for executions in Non-Penny Issues.[9] By continuing to provide such alternative methods to qualify for Take Fee Discounts, the Exchange believes the opportunities to qualify for credits is increased, which benefits all participants through increased volume to the Exchange.

The Exchange cannot predict with certainty whether any OTP Holders will avail themselves of the proposed changes to the Take Fee Discount, the Market Maker Posting Tiers, or Market Maker Non-Penny Incentive. At present, whether or when an OTP Holder would qualify for the enhanced credit varies month-to-month. Thus, the Exchange cannot predict with any certainty the number of OTP Holders that may qualify for the proposed new qualifications, but believes that OTP Holders (including those acting as Market Makers) would be encouraged to increase volume to take advantage of the available credits and discounts.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [12]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[13] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in July of 2021, the Exchange had less than 13% market share of executed volume of multiply-listed equity & ETF options trades.[14]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. In response to this competitive environment, the Exchange has established incentives, such as the Take Fee Discount, Market Maker Non-Penny Incentive, and Market Maker Posting Tiers.

Finally, the Exchange believes the proposed non-substantive change to the Fee Schedule (*i.e.,* replacing reference to ''orders'' with ''interest'' in the Market Maker Non-Penny Incentive) is reasonable, equitable, and not unfairly discriminatory because the change would add clarity, transparency and internal consistency to the Fee Schedule making it easier to navigate and comprehend, which would benefit all market participants.

The Take Fee Discount

The Exchange believes that the proposed modification to the Take Fee Discount to encourage OTP Holders to send both sides of a transaction to the Exchange is reasonably designed to continue to incent OTP Holders to increase the amount of interest sent to the Exchange, especially liquidity-taking interest. The Exchange believes the proposed fee change is reasonable because the Exchange already offers certain transaction fee discounts to OTP Holders and their Affiliates that aggregate their order flow on these types of transactions.[15] The Exchange also notes that this proposed change is being made for business and competitive reasons to align Exchange fee incentives with those charged by other options exchanges.[16] The Exchange believes that, notwithstanding the proposed change, it will still remain highly competitive and would continue to attract order flow to the Exchange.

The Market Maker Posting Tiers and Market Maker Non-Penny Incentive

The Exchange believes that the proposed (identical) change to the Market Maker Posting Tiers and Market Maker Non-Penny Incentive would continue to attract order flow to the Exchange because the limitation on the qualifying interest (from all posted interest to Market Maker posted interest) is offset by the significantly reduced volume requirement (from 0.80% to 0.15%). In addition, notwithstanding this proposed modification, the Exchange notes that OTP Holders are still eligible to qualify for the existing alternative (and unchanged) qualification basis in each of the Market Maker Posting Tiers and Market Maker Non-Penny Incentive for eligible executions.[17] By continuing to provide such alternative methods to qualify for the Market Maker Posting Tiers and Market Maker Non-Penny Incentive, the Exchange believes the opportunities to qualify for credits is increased, which benefits all participants through increased volume to the Exchange.

Finally, the proposed modification to the Market Maker Posting Tiers and Market Maker Non-Penny Incentive is designed to incent OTP Holders to transact more Market Maker volume on the Exchange, which may result in an increase of volume and liquidity for all market participants by providing more trading opportunities and tighter spreads, and may lead to a corresponding increase in order flow from other market participants.

To the extent the proposed rule change continues to attract greater volume and liquidity, by encouraging OTP Holders (and their affiliates) to increase their options volume on the Exchange in an effort to achieve higher credits, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule changes are a reasonable attempt by

[9] OTP Holder may (still) qualify for the Market Maker Posting Incentive by executing at least 0.55% of TCADV from Market Maker posted interest in all issues.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[13] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[14] Based on OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.,* the Exchange's market share in equity-based options increased from 10.71% for the month of July 2020 to 12.15% for the month of July 2021.

[15] *See supra* note 6.

[16] *See supra* note 7.

[17] *See supra* notes 8 and 9.

the Exchange to increase the depth of its market and improve its market share relative to its competitors.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange and OTP Holders can opt to avail themselves of the credits and discounts or not. Moreover, the proposal is designed to incent OTP Holders to aggregate all liquidity-taking interest at the Exchange as a primary execution venue and to continue to attract Market Maker posting interest on the Exchange. To the extent that the proposed change attracts more opportunities for execution of Customer and Market Maker posted interest on the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes it is not unfairly discriminatory to modify the Take Fee Discount because the proposed modification would align Exchange fees with similar fees on other options markets [18] and would be available to all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange believes the proposed changes are not unfairly discriminatory because the discounts and credits are available to all similarly-situated market participants on an equal and non-discriminatory basis.

The proposals are based on the amount and type of business transacted on the Exchange and OTP Holders are not obligated to try to achieve the enhanced qualifications, nor are they obligated to execute liquidity-taking interest or posted interest. To the extent that the proposed change attracts more interest, including liquidity-taking and Market Maker posting interest, to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [19]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange, including take-liquidity interest and Market Maker posting interest. The Exchange believes that the proposed modifications would incent OTP Holders to direct their liquidity-taking and Market Maker order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange and increased liquidity-taking order flow and posted Market Maker interest would increase opportunities for execution of other trading interest. The proposed modifications would be available to all similarly-situated market participants and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[20] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in July 2021, the Exchange had less than 13% market share of executed volume of multiply-listed equity & ETF options trades.[21]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to incent OTP Holders to direct trading interest (particularly both sides of a transaction and Market Maker interest) to the Exchange, to provide liquidity and to attract order flow, which would align Exchange fee incentives with those charged by other options exchanges.[22] To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar discounts for sending both sides of a transaction, by encouraging additional orders to be sent to the Exchange for execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section

[18] *See supra* note 7.

[19] See Reg NMS Adopting Release, *supra* note 12, at 37499.

[20] *See supra* note 13.

[21] Based on OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.,* the Exchange's market share in equity-based options increased from 10.71% for the month of July 2020 to 12.15% for the month of July 2021.

[22] *See supra* note 7.

19(b)(3)(A)[23] of the Act and subparagraph (f)(2) of Rule 19b–4[24] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[25] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2021–79 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2021–79. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2021–79, and should be submitted on or before October 6, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19862 Filed 9–14–21; 8:45 am]

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[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(2).

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92914; File No. SR–CboeEDGX–2021–037]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend EDGX Rule 11.1(a)(1) To Begin Accepting Orders at 2:30 a.m. Eastern Time

September 9, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2021, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to amend EDGX Rule 11.1(a)(1) to begin accepting orders at 2:30 a.m. Eastern Time. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend EDGX Rule 11.1 (Hours of Trading and Trading Days) to begin accepting orders at 2:30 a.m. Eastern Time rather than 3:30 a.m. Eastern Time. The proposal is substantially similar to NYSE Arca, LLC (''Arca'') Rule 7.34–E(a)(1) that provides Arca may accept orders 90 minutes before its early trading session begins.[5]

Currently EDGX Rule 11.1(a)(1) provides that orders may be entered into the System from 3:30 a.m. until 8:00 p.m. Eastern Time. The rule provides that orders entered between 3:30 a.m. and 4:00 a.m. Eastern Time are not eligible for execution until the start of the Early Trading Session,[6] Pre-Opening Session[7] or Regular Trading Hours,[8] depending on the time in force selected

[5] The Arca early trading session begins at 4:00 a.m. Eastern Time.

[6] The term ''Early Trading Session'' shall mean the time between 4:00 a.m. and 8:00 a.m. Eastern Time. *See* EDGX Rule 1.5(ii).

[7] The term ''Pre-Opening Session'' shall mean the time between 8:00 a.m. and 9:30 a.m. Eastern Time. *See* EDGX Rule 1.5(s).

[8] The term ''Regular Trading Hours'' shall mean the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* EDGX Rule 1.5(y).

by the User.[9] The rule further provides that at the commencement of the Early Trading Session, orders entered between 3:30 a.m. and 4 a.m. Eastern Time will become eligible for execution (''4:00 a.m. Start''), unless designated as eligible for execution during the Early Trading Session beginning at 7:00 a.m. Eastern Time (''7:00 a.m. Start''). Orders with a 7:00 a.m. Start designation may be entered between 3:30 a.m. and 7:00 a.m. Eastern Time.

The Exchange proposes to amend Rule 11.1(a)(1) to provide that the Exchange would begin accepting orders at 2:30 a.m. Eastern Time. The Exchange proposes to begin accepting earlier orders to compete with non-exchange trading venues that begin accepting orders before 3:30 a.m. Eastern Time. By moving the Exchange's order acceptance time earlier, Members that route orders to multiple venues before 3:30 a.m. Eastern Time would be able to include the Exchange in their early morning routing determinations. The Exchange does not propose to change the time when the Early Trading Session would begin or many any other rule changes.

Because of the technology changes required to implement this change, subject to effectiveness of this proposed rule change, the Exchange will notify Members when the Exchange would begin accepting orders at 2:30 a.m. Eastern Time, which the Exchange anticipates would be in September 2021.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would not change any trading functions on the Exchange and would only move up the time when the Exchange would begin accepting order flow for trading in the Early Trading Session. In addition, a Member that opts to send in orders during this earlier time period could, as today, designate which trading session such orders would be eligible to trade, including per Rule 11.1(a)(1), a 4:00 a.m. Start or a 7:00 a.m. Start. The Exchange further believes that the proposed rule change would promote competition among the exchanges and non-exchange venues because it would allow Members that currently route to non-exchange trading venues prior to 3:30 a.m. Eastern Time to include the Exchange in their early morning routing determinations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change would promote intermarket competition between the Exchange and non-exchange trading venues that accept order flow before 3:30 a.m. Eastern Time. Further, the Exchange believes the proposed rule change would impose no burden on intramarket competition as all Members could submit order flow to the Exchange beginning at 2:30 a.m. Eastern Time.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. According to the Exchange, the technology supporting the proposed rule change would be available less than 30 days after filing, and the Exchange would be able to implement the change before the 30-day operative delay ends. The Exchange also states that the proposed rule change would promote competition by providing Members that route orders to non-exchange venues or another exchange that accepts order flow before 3:30 a.m. Eastern Time [16] the opportunity to include the Exchange on its early morning routing determinations. The Commission believes that the Exchange's proposal does not raise any new or novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposed rule change to be operative on upon filing.[17]

[9] The term ''User'' shall mean any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3. *See* EDGX Rule 1.5(ee).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6).

[16] *See* Arca Rule 7.34–E(a)(1). *See also* Securities and Exchange Act No. 92657 (August 12, 2021) 86 FR 46296 (August 18, 2021) (SR–NYSEArca–2021–71).

[17] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on

Continued

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–CboeEDGX–2021–037 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–CboeEDGX–2021–037. 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–CboeEDGX–2021–037 and should be submitted on or before October 6, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19859 Filed 9–14–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92906; File No. SR–Phlx–2021–49]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Expiration Date of the Temporary Amendments Concerning Video Conference Hearings

September 9, 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 August 31, 2021, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. 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 extend the expiration date of the temporary amendments in SR–Phlx–2020–53 from August 31, 2021, to December 31, 2021.[4] The proposed rule change would not make any changes to the text of the Exchange rules.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to continue to harmonize Exchange Rule General 3, Section 16 with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA'') to its Rule 1015 in response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities.[5] The Exchange originally filed proposed rule change SR–Phlx–2020–53, which allows the Exchange Review Council (''ERC'') to conduct hearings in connection with appeals of Membership Application Program decisions, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. In April 2021, the Exchange filed a proposed rule change, SR–Phlx–2021–027, to extend the expiration date of the temporary amendments in SR–Phlx–2020–53 from April 30, 2021, to August 31, 2021.[6] While there are signs of

efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] If the Exchange seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond December 31, 2021, the Exchange will submit a separate rule filing to further extend the temporary extension of time. The amended Exchange rules will revert to their original form at the conclusion of the temporary relief period and any extension thereof.

[5] *See* Securities Exchange Act Release No. 92685 (August 17, 2021), No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR–FINRA–2021–019) (''FINRA Filing''). The Exchange notes that the FINRA Filing also proposed to temporarily amend FINRA Rules 9261, 9524, and 9830, which govern hearings in connection with appeals of disciplinary actions, eligibility proceedings, and temporary and permanent cease and desist orders. The Exchange's Rules 9261, 9524, and 9830 incorporate by reference The Nasdaq Stock Market LLC rules, which are the subject of a separate filing. *See* SR–NASDAQ–2021–067 (August 30, 2021). Therefore, the Exchange is not proposing to adopt that aspect of the FINRA Filing.

[6] *See* Securities Exchange Act Release No. 91766 (May 4, 2021), 86 FR 25014 (May 10, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–Phlx–2021–027); *see also* Securities Exchange Act Release No. 90758 (December 21, 2020), 85 FR 85782 (December 29, 2020) (Notice of Filing and

improvement, much uncertainty remains for the coming months. The emergence of the Delta variant, dissimilar vaccination rates throughout the United States, and the uptick in transmissions in many locations indicate that COVID–19 remains an active and real public health concern.[7] Based on its assessment of current COVID–19 conditions and the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and corresponding restrictions,[8] the Exchange has determined that there is a continued need for temporary relief for several months beyond August 31, 2021. Accordingly, the Exchange proposes to extend the expiration date of the temporary rule amendments in SR–Phlx–2020–53 from August 31, 2021, to December 31, 2021.

As set forth in SR–Phlx–2020–53, the Exchange also relies on COVID–19 data and criteria to determine whether the current public health risks presented by an in-person hearing may warrant a hearing by video conference. Based on that data and criteria, the Exchange does not believe the COVID–19-related health concerns necessitating this relief will meaningfully subside by August 31, 2021, and has determined that there will be a continued need for this temporary relief for several months beyond that date. Accordingly, the Exchange proposes to extend the expiration date of the temporary rule amendments originally set forth in SR–Phlx–2020–53 from August 31, 2021, to December 31, 2021. The extension of these temporary amendments allowing for specified ERC hearings to proceed by video conference will allow the Exchange's critical adjudicatory functions to continue to operate effectively in these extraordinary circumstances—enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets—while also protecting the health and safety of hearing participants.

The Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing greater harmonization between the Exchange rules and FINRA rules of similar purpose,[11] resulting in less burdensome and more efficient regulatory compliance.

The proposed rule change, which extends the expiration date of the temporary amendments to the Exchange rules set forth in SR–Phlx–2020–53, will continue to aid the Exchange's efforts to timely conduct hearings in connection with its core adjudicatory functions. Given the current and frequently changing COVID–19 conditions and the uncertainty around when those conditions will see meaningful, widespread and sustained improvement, without this relief allowing ERC hearings to continue to proceed by video conference, the Exchange might be required to postpone some or almost all hearings indefinitely. The Exchange must be able to perform its critical adjudicatory functions in order to fulfill its statutory obligations to protect investors and maintain fair and orderly markets. As such, this relief is essential to the Exchange's ability to fulfill its statutory obligations and allows hearing participants to avoid the serious COVID–19-related health and safety risks associated with in-person hearings.

Among other things, this relief will allow the ERC to timely provide members, disqualified individuals and other applicants an approval or denial of their applications. As set forth in detail in SR–Phlx–2020–53, this temporary relief allowing ERC hearings to proceed by video conference accounts for fair process considerations and will continue to provide fair process while avoiding the COVID–19-related public health risks for hearing participants. Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the temporary proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As set forth in SR–Phlx–2020–53, the proposed rule change is intended solely to extend temporary relief necessitated by the continued impacts of the COVID–19 outbreak and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to its operations, including its critical adjudicatory processes, and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on August 31, 2021.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13]

Immediate Effectiveness of File No. SR–Phlx–2020–053).

[7] For example, President Joe Biden on July 29, 2021, announced several measures to increase the number of people vaccinated against COVID–19 and to slow the spread of the Delta variant, including strengthening safety protocols for federal government employees and contractors. *See https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/29/fact-sheet-president-biden-to-announce-new-actions-to-get-more-americans-vaccinated-and-slow-the-spread-of-the-delta-variant/.*

[8] For instance, the Centers for Disease Control and Prevention on July 27, 2021, began recommending that fully vaccinated people wear a mask in public indoor settings in areas of substantial or high transmission and noted that fully vaccinated people might choose to wear a mask regardless of the level of transmission, particularly if they are immunocompromised or at increased risk for severe disease from COVID–19. *See https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html.* Also, several cities, including Atlanta, Baltimore, Los Angeles, New Haven and San Francisco, have recently reinstated their mask mandates.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See supra* note 5.

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has indicated that the proposed rule change to extend the expiration date will continue to prevent unnecessary impediments to its operations, including its critical adjudicatory processes, and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on August 31, 2021.[16] Importantly, extending the relief provided in SR–Phlx–2020–53 immediately upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of its employees.[17] The Commission also notes that this proposal extends without change the temporary relief previously provided by SR–Phlx–2020–53.[18] As proposed, the changes would be in place through December 31, 2021 and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[19] For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[20]

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] *See supra* Item II.

[17] *See* FINRA Filing, 86 FR at 47171 (noting the same in granting FINRA's request to waive the 30-day operative delay so that SR–FINRA–2021–019 would become operative immediately upon filing).

[18] *See supra* note 6.

[19] *See supra* note 4. As noted above, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond December 31, 2021, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[20] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2021–49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2021–49. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2021–49 and should be submitted on or before October 6, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19851 Filed 9–14–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92912; File No. SR–CBOE–2021–051]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 5.52 in Connection With the Minimum Initial Quote Size Requirement for Market-Makers

September 9, 2021.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 2, 2021, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [4] and Rule 19b–4(f)(6) thereunder.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Rule 5.52 in connection with the minimum initial quote size requirement for Market-Makers. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/*

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(6).

AboutCBOE/CBOELegalRegulatoryHome.aspx), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 5.52(b) to systematically reject Market-Maker quotes that do not meet the minimum initial quote size requirement determined by the Exchange.

Rule 5.52 governs Market-Maker quoting obligations on the Exchange. Specifically, Rule 5.52(b) provides that a Market-Maker's bid (offer) [6] for a series must be accompanied by the minimum number of contracts determined by the Exchange on a class-by-class basis, the minimum of which will be one contract at the price of the bid (offer) the Market-Maker is willing to buy (sell). The proposed rule change updates Rule 5.52(b) to provide that the System rejects a Market-Maker's bid (offer) that does not meet the minimum initial quote size determined by the Exchange for that class. Currently, the Exchange's Regulatory Division conducts surveillances to review for and enforce Market-Maker compliance with the minimum initial quote size requirements.[7] By allowing the System to automatically reject Market-Maker quotes that do not meet the applicable minimum initial quote requirements for that class, the proposed rule change is designed to reduce a regulatory surveillance burden on the Exchange in having to manually surveil for and enforce Market-Maker compliance with the minimum initial quote size requirements, thereby allowing the Exchange to reallocate regulatory resources to other regulatory processes. The proposed rule change will also serve as an additional risk control for Market-Makers quoting on the Exchange by reducing the compliance risk associated with inadvertently submitting a bid (offer) that does not meet the minimum initial quote size requirement for that class. The Exchange notes, too, that other Exchange Rules provide for systematically enforced compliance with certain trading rules and requirements, including order size requirements.[8]

Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [10] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [11] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that, by having the System automatically reject Market-Maker quotes that do not meet the applicable minimum initial quote size requirement in a class, the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, will protect investors. In particular, the Exchange believes that the proposed rule change will reduce a surveillance burden on the Exchange in having to manually surveil for and enforce Market-Maker compliance with the minimum initial quote size requirements, thereby allowing the Exchange to reallocate regulatory resources into other regulatory functions. Additionally, the proposed rule change will benefit market participants by serving as an additional risk control for Market-Makers quoting on the Exchange and reducing the compliance risk associated with inadvertently submitting a bid (offer) that does not meet the minimum initial quote size requirement in that class. The proposed rule change does not present any new or novel issues or System functionality as other Exchange Rules provide for systematically enforced compliance with certain trading rules and requirements, including order size requirements.[12]

The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[13] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange, as the System will automatically enforce the minimum initial quote size requirement for Market-Makers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change is competitive in nature, but rather is designed to enhance the Exchange's enforcement of Exchange Rules. The proposed rule change is not adding or amending a Market-Maker quoting obligation; rather, it is merely automating surveillance of an existing obligation. The Exchange does not believe that the proposed rule change will impose any burden on

[6] Pursuant to Rule 5.52, a Market Maker's quotes must be firm, two-sided bids (offers) that meet the applicable minimum initial quote size requirement.

[7] Currently, the Exchange has an initial minimum quote size in place for SPX during Regular Trading Hours (''RTH''). *See* Regulatory Circular 20–025, Reinstatement of Minimum Intraday Electronic Quote Size in SPX (April 2, 2020) available at *https://cdn.cboe.com/resources/regulation/circulars/regulatory/RC20-025-Reinstatement-of-Minimum-Intraday-Electronic-Quote-Size-in-SPX.pdf.* The minimum size for all other classes is the default size of one contract.

[8] *See e.g.,* Rule 5.66(a), which provides that Trading Permit Holders shall not effect Trade-Throughs, however, Rule 5.32(c) provides that the System cancels or rejects an order that would trade through a Protected Quotation (if not otherwise eligible for routing or the price-adjust process); *and* Rule 5.34(c)(3), which provides that the System cancels or rejects an incoming order or quote with a size that exceeds the maximum contract size (which the Exchange determines).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

[12] *See supra* note 7.

[13] 15 U.S.C. 78f(b)(1).

intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it will apply equally to all Market-Maker quotes that do not meet the applicable minimum initial quote size requirement for a class. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it is related to compliance with quoting requirements that are applicable only to Market-Makers on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2021–051 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–CBOE–2021–051. 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–CBOE–2021–051, and should be submitted on or before October 6, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19857 Filed 9–14–21; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b-4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92913; File No. SR–CBOE–2021–052]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 5.32 in Connection With Participation Entitlements

September 9, 2021.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 2, 2021, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [4] and Rule 19b–4(f)(6) thereunder.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Rule 5.32 in connection with participation entitlements. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(6).

Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 5.32(a)(2)(B), in connection with participation entitlements, to clarify the manner in which the System treats non-Priority Customers with orders and quotes at the same price and to correct certain inadvertent rule text regarding the manner in which the System applies the PMM participation entitlement percentages. In particular, Rule 5.32(a)(2)(B) governs participation entitlements for Designated Market-Makers (''DPMs''), Lead Market-Makers (''LMMs'') and Preferred Market-Makers (''PMMs'') and currently provides that the Exchange may apply one or more of the DPM, LMM, and PMM participation entitlements (in any sequence) to a class. If the DPM, LMM, or PMM, as applicable, has a quote at the highest bid or lowest offer, it will receive the greater of (i) the number of contracts it would receive pursuant to the applicable base allocation algorithm and (ii) 50% of the contracts if there is one other non-Priority Customer order or quote, 40% of the contracts if there are two non-Priority Customer orders or quotes, or 30% of the contracts if there are three or more non-Priority Customer orders or quotes on the Book at that price.

First, the proposed rule change updates Rule 5.32(a)(2)(B) to clarify the manner in which the System treats non-Priority Customer orders and quotes. For the purposes of the participation entitlement, the System currently counts the number of firms at each price level, aggregating orders or quotes per firm, rather than counting the number of each separate order or quote. Therefore, to reflect current System functionality, the proposed rule change removes references to individual non-Priority Customer orders and quotes in Rule 5.32(a)(2)(B) and updates the language to provide that, if the DPM or LMM,[6] as applicable, has a quote at the highest bid or lowest offer, it will receive the greater of (i) the number of contracts it would receive pursuant to the applicable base allocation algorithm and (ii) 50% of the contracts if there is one other non-Priority Customer, 40% of the contracts if there are two non-Priority Customers, or 30% of the contracts if there are three or more non-Priority Customers with orders or quotes on the Book at that price.

Second, the proposed rule change updates Rule 5.32(a)(2)(B) to be consistent with the manner in which the System currently applies the participation entitlement percentages for PMMs. The System currently applies a 50%/40% participation entitlement percentage structure to PMMs, as opposed to the 50%/40%/30% participation entitlement percentage structure that, pursuant to Rule 5.32(a)(2)(B), applies to all three Market-Maker types. Therefore, to reflect current System functionality, the proposed rule change adopts language in Rule 5.32(a)(2)(B) to provide that, if the PMM, as applicable, has a quote at the highest bid or lower offer, it will receive the greater of (i) the number of the contracts it would receive pursuant to the applicable base allocation algorithm and (ii) 50% of the contracts if there is one other non-Priority Customer, or 40% of the contracts if there are two or more non-Priority Customers with orders or quotes on the Book at that price. The current participation entitlement percentage structure for DPMs and LMMs (*i.e.,* 50%/40%/30%) will remain the same and the Exchange may continue to apply one or more of the participation entitlements for DPMs and LMMs, and for PMMs, as proposed, (in any sequence) to a class. The Exchange notes that it previously restructured its Rules related to order entry and allocation, including the participation entitlement provisions, in connection with a 2019 technology migration. Prior to this restructuring, separate provisions governed the participation entitlement percentages for PMMs, DPMs, and LMMs. The provision that governed the PMM participation entitlements provided for the same 40%/50% participation entitlement structure as proposed herein[7] and the provisions that governed the DPM and LMM participation entitlements provided for the same participation entitlement percentage structure for DPMs and LMMs as Rule 5.32(a)(2)(B) currently provides for today. Upon the migration-related restructuring of its Rules, the Exchange intended to continue to apply the 50%/40% participation entitlement percentage structure to PMMs and the 50%/40%/30% participation entitlement percentage structure to DPMs and LMMs. Indeed, following the restructuring, the System today continues to apply the 50%/40% participation entitlement percentage structure to PMMs and the 50%/40%/30% participation entitlement percentage structure to DPMs and LMMs. However, in the migration-related filing that restructured the rules governing participation entitlements by combining such rules, the Exchange inadvertently applied the 50%/40%/30% participation entitlement percentage structure to all three Market-Maker types. Therefore, the proposed rule change updates the Rule to correct this inadvertent rule change and make explicit that the 50%/40% participation entitlement percentage structure continues to apply to PMMs, consistent with the pre-migration provision that was previously filed with the Commission.

The Exchange notes the proposed rule changes reflect how the System currently treats non-Priority Customer with orders or quotes at the same price for the purposes of the participation entitlement and reflect the participation entitlement percentages that the System continues to apply to PMMs today. The proposed rule changes are merely a clarification and a correction to inadvertently changed rule text that do not alter any current functionality nor the current participation entitlement percentage structures, but instead add clarity to the Rule by more accurately reflecting the current participation entitlement process.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and

[6] The proposed rule change removes ''PMM'' from this provision and adopts language in connection with participation entitlement percentages application to PMMs, as described in further detail in this proposal.

[7] Specifically, prior Rule 8.13(c) provided that the PMM participation entitlement is the greater of one contract or 40% when there are two or more other Market-Maker quotes or broker-dealer orders at the BBO, and 50% when there is one other Market-Maker quote or broker-dealer order at the BBO. The Exchange notes that the current application of the base algorithm, as opposed to one contract, was the only substantive change intended to be made to this provision. DPMs, LMMs, and PMMs were intended to continue to be subject to the obligations that were set forth in the applicable Rules in place prior to the 2019 technology migration. *See* Securities Exchange Act Release No. 86374 (July 15, 2019), 84 FR 34963 (July 19, 2019) (SR–CBOE–2019–033) at footnote 68.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule changes regarding the manner in which the System treats non-Priority Customer with orders and quotes at the same price for the purposes of the participation entitlement and applies the PMM participation entitlement percentages removes impediments to and perfects the mechanism of a free and open market and national market system by amending Rule 5.32(a)(2)(B) to be consistent with current functionality. The proposed changes are merely a clarification and a correction to inadvertently changed rule text in the Rule intended to more accurately reflect how the System currently works, thereby increasing transparency in the Rule and ultimately benefitting investors. The proposed clarification and correction do not alter any current functionality nor the current participation entitlement percentage structures, which are consistent with pre-migration provisions as previously filed with the Commission, but instead provide clarity to the Rule by more accurately describing the current participation entitlement process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes to Rule 5.32(a)(2)(B) are not competitive in nature but are merely a clarification and correction in the Rule, consistent with existing System functionality and intended to provide clarity to the Rule by more accurately reflecting the current participation entitlement process. DPMs, LMMs and PMMs will continue to receive participation entitlements in the same manner as they do today.

[10] *Id.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2021–052 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–CBOE–2021–052. 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–CBOE–2021–052, and should be submitted on or before October 6, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19858 Filed 9–14–21; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92926; File No. SR–BOX–2021–19]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Proposed Rule Change Related to BOX Exchange LLC and BOX Holdings Group LLC Ownership Transfer Transactions

September 9, 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 August

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

27, 2021, BOX Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 update its ownership schedule and accomplish the following ownership transfer transactions, resulting in changes to the ownership of the Exchange and BOX Holdings Group LLC, an affiliate of the Exchange (''BOX Holdings''): (i) The Exchange proposes to repurchase the ownership interests in the Exchange held by Citigroup Financial Products Inc. (''Citi'') and CSFB Next Fund Inc. (''CSFB''); (ii) BOX Holdings proposes to repurchase the ownership interests in BOX Holdings held by Citi and CSFB; and (iii) Wolverine Holdings, L.P. (''Wolverine'') proposes to purchase an ownership interest in the Exchange from MX US 2, Inc., a wholly-owned subsidiary of TMX Group Limited (''MXUS2''). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxoptions.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is a limited liability company, organized under the laws of the State of Delaware on August 26, 2010. The Exchange's charter is a Second Amended and Restated Limited Liability Company Agreement, dated as of May 29, 2020, as amended November 30, 2020 (the ''Exchange LLC Agreement''). Each of Citi, CSFB and MXUS2 became a Member [3] of the Exchange on May 10, 2012. Wolverine is not currently a Member of the Exchange.

BOX Holdings is a limited liability company, organized under the laws of the State of Delaware on August 26, 2010. BOX Holdings is the sole owner of BOX Options Market LLC, a facility of the Exchange (''BOX Options''). The BOX Holdings charter is a Second Amended and Restated Limited Liability Company Agreement, dated as of September 13, 2018 (the ''Holdings LLC Agreement''). Each of Citi and CSFB became a Member [4] of BOX Holdings on May 10, 2012.

6,445 Economic Units [5] and 8,388 Voting Units [6] represent Citi's interest in the Exchange, comprising 7.683% of all outstanding Economic Units and 9.999% of all outstanding Voting Units of the Exchange, respectively (the ''Citi Exchange Units''). 1,155 Class A Units [7] and 25 Class B Units [8] represent Citi's interest in BOX Holdings, comprising 7.853% of all outstanding Class A Units and Class B Units (collectively, ''Units'') of BOX Holdings (the ''Citi Holdings Units'' and, together with the Citi Exchange Units, the ''Citi Units''). Citi's voting power with respect to votes of Members of BOX Holdings is 8.13% and Citi's voting power on the Board of Directors of BOX Holdings is 8.38%.

6,123 Economic Units and 8,388 Voting Units represent CSFB's interest in the Exchange, comprising 7.299% of all outstanding Economic Units and 9.999% of all outstanding Voting Units of the Exchange, respectively (the ''CSFB Exchange Units''). 475 Class A Units represent CSFB's interest in BOX Holdings, comprising 3.161% of all outstanding Units of BOX Holdings (the ''CSFB Holdings Units'' and, together with the CSFB Exchange Units, the ''CSFB Units''). CSFB's voting power with respect to votes of Members of BOX Holdings is 3.27% and CSFB's voting power on the Board of Directors of BOX Holdings is 3.37%.

33,554 Economic Units and 16,777 Voting Units represent MXUS2's interest in the Exchange, comprising 40% of all outstanding Economic Units and 20% of all outstanding Voting Units of the Exchange, respectively. Wolverine currently does not hold any interest in the Exchange.

The Exchange has agreed with Citi to purchase the Citi Exchange Units. BOX Holdings has agreed with Citi to purchase the Citi Holdings Units. Accordingly, it is proposed that Citi transfer all of the Citi Exchange Units to the Exchange and all of the Citi Holdings Units to BOX Holdings (the ''Citi Transfer'').

The Exchange has agreed with CSFB to purchase the CSFB Exchange Units. BOX Holdings has agreed with CSFB to purchase the CSFB Holdings Units. Accordingly, it is proposed that CSFB transfer all of the CSFB Exchange Units to the Exchange and all of the CSFB Holdings Units to BOX Holdings (the ''CSFB Transfer'').

Wolverine has agreed with MXUS2 to purchase one (1) Economic Unit in the Exchange from MXUS2. Accordingly, it is proposed that MXUS2 transfer one (1) Economic Unit to Wolverine (the ''Wolverine Transfer'' and, together with the Citi Transfer and the CSFB Transfer, the ''Transfers''). Wolverine is an existing Exchange Facility Participant.[9] At the time of the Wolverine Transfer, Wolverine will become a Member of the Exchange. As a holder of one (1) Economic Unit in the Exchange, Wolverine will also be allocated 2,637 Voting Units as provided in the

[3] A ''Member'' of the Exchange means the current owners of Economic Units and Voting Units of the Exchange and will include any person subsequently admitted to the Exchange as an additional or substitute Member of the Exchange. *See* Exchange LLC Agreement § 1.1.

[4] A ''Member'' of BOX Holdings means the current owners of Units of BOX Holdings and will include any Person subsequently admitted to BOX Holdings as an additional or substitute Member of BOX Holdings. *See* Holdings LLC Agreement § 1.1. Current Members of BOX Holdings are: MXUS2, IB Exchange Corp., Citadel Securities Principal Investments LLC; Citigroup Financial Products Inc., UBS Americas Inc., CSFB Next Fund Inc., JPMC Strategic Investments I Corporation, Wolverine and Aragon Solutions Ltd.

[5] ''Economic Units'' of the Exchange means equal units of limited liability company interest in the Exchange collectively comprising all interests in the profits and losses of the Exchange and all rights to receive distributions from the Exchange as set forth in the Exchange LLC Agreement. *See* Exchange LLC Agreement § 2.5(a).

[6] ''Voting Units'' of the Exchange means equal units of limited liability company interest in the Exchange collectively comprising all voting interests of Members with respect to Exchange matters. *See* Exchange LLC Agreement § 2.5(b).

[7] ''Class A Units'' of BOX Holdings means equal units of limited liability company interest in BOX Holdings, including an interest in the ownership and profits and losses of BOX Holdings and the right to receive distributions from BOX Holdings. *See* Holdings LLC Agreement § 1.1.

[8] ''Class B Units'' of BOX Holdings are identical to Class A Units except Class B Units include conversion rights, a liquidation preference and class voting rights with respect to those matters. *See* Holdings LLC Agreement §§ 1.1 and 2.5.

[9] ''Exchange Facility Participant'' means a firm or organization that is registered with the Exchange pursuant to the Exchange Rules for purposes of participating in trading on any Exchange Facility. *See* Exchange LLC Agreement § 1.1.

Exchange LLC Agreement,[10] comprising 0.002% of all outstanding Economic Units and 5.026% of all outstanding Voting Units of the Exchange, respectively.

Pursuant to the Exchange LLC Agreement, Wolverine will not become a Member of the Exchange unless Wolverine is first accepted and approved as a transferee [11] and admitted as a Member by the affirmative vote of Members holding a majority of the Voting Percentage Interest,[12] Wolverine executes a counterpart of the Exchange LLC Agreement and agrees in writing to assume the obligations of a Member under the Exchange LLC Agreement, and the Board determines the Wolverine Transfer is permitted by the Exchange LLC Agreement.[13] Attached [sic] as Exhibit 5A is a form of Instrument of Accession to be executed by Wolverine prior to closing of the Wolverine Transfer to comply with the foregoing requirements.

After the Citi Transfer, the Citi Units will no longer be outstanding and Citi will have no remaining rights under the Exchange LLC Agreement or the Holdings LLC Agreement. After the CSFB Transfer, the CSFB Units will no longer be outstanding and CSFB will have no remaining rights under the Exchange LLC Agreement or the Holdings LLC Agreement. In connection with the Transfers, the Exchange proposes to amend Schedule A to the Exchange LLC Agreement, in the form of Exhibit 5B to this filing, to reflect the changes in Exchange ownership. No amendment of the Holdings LLC Agreement is proposed.

As provided in Section 7.3(f) of the Exchange LLC Agreement, ''no Person, alone or together with any Related Persons, shall own, directly or indirectly, of record or beneficially, an aggregate Economic Percentage Interest [14] greater than 40% (or 20% if such Person is an Exchange Facility Participant) (the ''Economic Ownership Limit'') . . . .'' Accordingly, because the total number of outstanding Economic Units of the Exchange are reduced in the Transfers, outstanding Economic Units held by any remaining Members of the Exchange will be cancelled to the extent necessary to ensure compliance with the Economic Ownership Limit.

As provided in Section 7.3(g) of the Exchange LLC Agreement, ''no Person, alone or together with any Related Persons, shall own, directly or indirectly, of record or beneficially, an aggregate Voting Percentage Interest of greater than 20% (the ''Voting Ownership Limit'') . . . .'' [15] Further, Section 7.3(g) of the Exchange LLC Agreement provides that, upon any change in economic ownership, the number of Voting Units held by each Member of the Exchange shall automatically adjust to maintain compliance with the Voting Ownership Limit. Accordingly, because the number of Economic Units held by Members of the Exchange are reduced by the Transfers, the number of outstanding Voting Units of the Exchange will be reduced accordingly and the number of Voting Units held by each of the remaining Members of the Exchange, including Wolverine, will be adjusted to the extent necessary to ensure compliance with the Voting Ownership Limit.

As discussed above, all ownership limits relating to the Exchange will continue to be strictly respected. The Transfer will not result in any Member of the Exchange exceeding its applicable Economic Ownership Limit or Voting Ownership Limit (collectively, its ''Ownership Limits''). Prior to the Transfers, some Members of the Exchange already held the maximum ownership percentages allowed under the Exchange LLC Agreement. The ownership percentages held by these Members will remain below the applicable Ownership Limits after giving effect to the Transfers. For other Members of the Exchange, adjustments to ownership percentages resulting from the Transfer will be made to comply with all Ownership Limits.[16] After giving effect to the Transfers, no Member will hold more than 40% Economic Percentage Interest, no Exchange Facility Participant will hold more than 20% Economic Percentage Interest, and no Member will hold more than 20% Voting Percentage Interest in the Exchange. Upon the closing of the Transfers, each of MXUS2 and IB Exchange Corp. (''IB'') would hold the maximum number of Economic Units permitted under its applicable Economic Ownership Limit and each Member of the Exchange except Wolverine would hold the maximum number of Voting Units permitted under its applicable Voting Ownership Limit.

The composition of the Board of Directors of the Exchange will remain unaffected by the Transfer. The makeup of the Board will still be comprised of at least 20% of Directors who are Participant Directors,[17] a majority of Directors who are Non-industry Directors,[18] and one (1) Director who is also an officer or director of BOX Holdings, if BOX Holdings chooses to exercise its right to appoint such a director.[19]

Section 7.4(e) of the Holdings LLC Agreement provides that BOX Holdings shall provide the SEC with written notice ten (10) days prior to the closing date of any acquisition that results in a Member's Percentage Interest [20] meeting or crossing the threshold level of 5% or

[10] As discussed below, § 7.3(g) of the Exchange LLC Agreement provides that a Member of the Exchange may hold a different number of Voting Units than Economic Units due to the application of Voting Ownership Limits to other Members.

[11] To be eligible for such approval, the proposed transferee must (x) be of high professional and financial standing, (y) be able to carry out its duties as a Member hereunder, if admitted as such, and (z) be under no regulatory or governmental bar or disqualification. *See* Exchange LLC Agreement § 7.1(a).

[12] ''Voting Percentage Interest'' with respect to a Member means the ratio of the number of Voting Units held by the Member, directly or indirectly, of record or beneficially, to the total of all of the issued and outstanding Voting Units held by Members, expressed as a percentage. Voting Units held by a Member that are ineligible to vote shall not be counted in the numerator or the denominator when determining such ratio. *See* Exchange LLC Agreement § 1.1.

[13] *See* Exchange LLC Agreement § 7.1(c).

[14] ''Economic Percentage Interest'' with respect to a Member means the ratio of the number of Economic Units held by the Member, directly or indirectly, of record or beneficially, to the total of all of the issued and outstanding Economic Units held by Members, expressed as a percentage. *See* Exchange LLC Agreement § 1.1.

[15] Any Member may voluntarily set a lower Voting Ownership Limit for itself at its own discretion. *See* Exchange LLC Agreement § 7.3(g)(i).

[16] Any Economic Units held by a Member in excess of its Economic Ownership Limit are cancelled because the existence of such Units is not permitted by the Exchange LLC Agreement. The number and allocation of Voting Units automatically adjust upon any change in ownership of Economic Units pursuant to Exchange LLC Agreement § 7.3(g)(iii).

[17] ''Participant Director'' means a Director of the Exchange who is an officer, director or employee of an Exchange Facility Participant. *See* BOX Exchange LLC Bylaws § 1.01.

[18] ''Non-industry Director'' means a Director of the Exchange who (i) has no material business relationship with the Exchange or any Affiliate of the Exchange, or any Exchange Facility Participant or any Affiliate of any Exchange Facility Participant and is not associated with any broker or dealer as required pursuant to Section 6(b)(3) of the Securities Exchange Act of 1934, as amended or (ii) is not an Industry Representative. ''Industry Representative'' means an individual who is an officer, director or employee of a broker or dealer or who has been employed in any such capacity at any time within the prior three (3) years, as well as an individual who has, or has had, a consulting or employment relationship with the Exchange, or any Affiliate of the Exchange, at any time within the prior three (3) years. *See* BOX Exchange LLC Bylaws § 1.01.

[19] *See* BOX Exchange LLC Bylaws § 4.02.

[20] ''Percentage Interest'' with respect to a Member of BOX Holdings means the ratio of the number of Units held by the Member to the total of all of the issued Units, expressed as a percentage and determined with respect to each class of Units, whenever applicable. *See* Holdings LLC Agreement § 1.1.

the successive levels of 10% and 15%. Although Citadel Securities Principal Investments LLC (''Citadel'') is not acquiring any additional Units of BOX Holdings in the Transfers, the reduction of the total number of outstanding Units of BOX Holdings in connection with the Transfers will result in a corresponding increase in the Percentage Interest held by Citadel from 13.80% to 15.50% and thereby crossing the 15% level.

The change in Citadel's Percentage Interest resulting from the Transfers will also increase the voting power of Citadel in BOX Holdings. After giving effect to the Transfers, Citadel's voting power with respect to votes of Members of BOX Holdings will increase from 14.28% to 16.65% and Citadel's total voting power on the Board of Directors of BOX Holdings will increase from 14.73% to 16.65%. Citadel currently has the power to appoint one (1) representative to the BOX Holdings Board of Directors [21] and, after giving effect to the Transfers, Citadel will have the power to appoint two (2) Directors of BOX Holdings.[22]

Section 7.4(f) of the Holdings LLC Agreement provides that a rule filing pursuant to Section 19 of the Exchange Act is required with respect to certain transactions that result in the acquisition and holding by a person of an aggregate Percentage Interest in BOX Holdings which meets or crosses the threshold level of 20% or any successive 5% level. Although MXUS2 is not acquiring any additional Units of BOX Holdings in connection with the Transfers, the reduction of the total number of outstanding Units of BOX Holdings in connection with the Transfers will result in a corresponding increase in the Percentage Interest held by MXUS2 from 42.62% to 47.89% and thereby crossing the 45% level. Although IB is not acquiring any additional Units of BOX Holdings in connection with the Transfers, the reduction of the total number of outstanding Units of BOX Holdings in connection with the Transfers will result in a corresponding increase in the Percentage Interest held by IB from 22.69% to 25.50% and thereby crossing the 25% level.

The change in IB's ownership percentage of Holdings resulting from the Transfers will not affect IB's voting percentage because, as an Exchange Facility Participant on BOX Options, IB's allowable voting percentage is limited to 20%, as provided by the Holdings LLC Agreement [23] and will remain at 19.999%. As a result of this limitation of IB's voting percentage, the changes resulting from the Transfers will also increase the voting power of MXUS2 in BOX Holdings as IB's voting power above 19.999% will be reallocated among other Members of BOX Holdings. After giving effect to the Transfers, MXUS2's voting power with respect to votes of Members of BOX Holdings will increase from 44.10% to 51.43% and MXUS2's total voting power on the Board of Directors of BOX Holdings will increase from 45.50% to 51.43%, providing MXUS2 the ability to control votes of the Board of Directors of BOX Holdings that require a simple majority vote. MXUS2 currently has the power to appoint three (3) representatives to the BOX Holdings Board of Directors [24] and, after giving effect to the Transfers, MXUS2 will still have the power to appoint the same number of Directors of BOX Holdings.

No other Member of BOX Holdings will have its ownership percentage in BOX Holdings adjusted by more than 1% of the total BOX Holdings ownership as a result of the Transfers.

Section 7.3(e) of the Exchange LLC Agreement provides that the Exchange shall provide the SEC with written notice ten (10) days prior to the closing date of any acquisition that would result in a Member having a Voting Percentage Interest of five percent (5%) or more. Although Wolverine proposes to acquire only one (1) Exchange Economic Unit of the Exchange, the allocation of Exchange Voting Units resulting from the Transfers would result in Wolverine holding 2,637 Exchange Voting Units, representing a 5.03% Voting Percentage Interest and thereby crossing the 5% level.

As discussed above, all Exchange owners are subject to a Voting Ownership Limit of 20%. Although Aragon Solutions Ltd. (''Aragon'') is not acquiring any additional Economic Units of the Exchange in the Transfers, the reallocation of Exchange Voting Units resulting from the Transfers would result in Aragon holding 10,493 Exchange Voting Units, representing 19.999% Voting Percentage Interest, compared with 6.294% prior to the Transfers.

No other Member of the Exchange will have its Economic Percentage Interest or its Voting Percentage Interest in the Exchange adjusted by more than 5% of the total BOX Holdings ownership as a result of the Transfers.

The consideration paid to Citi and CSFB by the Exchange will not materially affect the Exchange's capitalization. After payment by the Exchange of the purchase price to each of Citi and CSFB, the Exchange will continue to reserve sufficient assets to operate and fulfill its regulatory responsibilities with respect to itself and BOX Options. The Exchange Board of Directors remains committed to ensuring the Exchange is sufficiently capitalized to meet its obligations. The Exchange and BOX Options continue to be subject to a written Facility Agreement, which provides that the Exchange receives and retains all assets deemed to be necessary for regulatory purposes by the Exchange.[25] Accordingly, payments made to consummate the Transfers will not have a material effect on the Exchange's ability to carry out its duties and obligations as an SRO.

LabMorgan Corp., a Member of the Exchange, notified the Exchange it has changed its legal name to JPMC Strategic Investments I Corporation. The updated name of this Member is reflected in the amendment to the Exchange LLC Agreement attached [sic] hereto as Exhibit 5B.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[26] in general, and furthers the objectives of Section 6(b)(1),[27] in particular, in that it enables the Exchange to be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange believes that the proposed name change and changes in ownership are necessary to accommodate the desires of certain Members to arrange their affairs, including to exit ownership of the Exchange and BOX Holdings. The Exchange believes that this filing furthers the objectives of Section 6(b)(5) of the Act because the proposed rule change would be consistent with and facilitate a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged

[21] *See* Holdings LLC Agreement § 4.1(a)(i).

[22] *See* Holdings LLC Agreement § 4.1(a)(iii).

[23] *See* Holdings LLC Agreement § 7.4(h).

[24] *See* Holdings LLC Agreement § 4.1(a)(iv).

[25] *See* Securities Exchange Act Release No. 34–66871 (April 27, 2012) 77 FR 26323 (May 3, 2012) (Order granting approval of BOX Exchange).

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Accordingly, the proposed ownership changes will ensure the continued operation of both the Exchange and BOX Holdings without any detrimental effect on the operations of either the Exchange or its facility.

Further, the Exchange believes the proposed name change and ownership changes are consistent with, and will not interfere with, the self-regulatory obligations of BOX Exchange. The Exchange importantly notes that it is not proposing to amend any of the provisions within the Holdings LLC Agreement or the BOX Exchange LLC Agreement dealing with the availability or protection of information, books and records, undue influence, conflicts of interest, unfair control by an affiliate, and regulatory independence of BOX Exchange.[28] In addition, the ownership changes proposed by the Exchange in this filing are consistent with past ownership and voting levels held by Members of BOX Holdings, MXUS2 has previously held voting power in BOX Holdings in excess of 50% [29] and IB has previously held a Percentage Interest in BOX Holdings greater than 25%.[30] The ability of the Exchange to operate and fulfill its regulatory responsibilities will continue unaffected by this proposal and the Exchange will continue to be able to serve its independent regulatory functions as an SRO after the proposed transactions are consummated.

The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Act [31] in that it is designed to facilitate transactions in securities, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Exchange believes these objectives are supported by having active, interested owners of the Exchange. The Exchange further believes accommodating the transfer of ownership interests in the Exchange and its facility between willing buyers and sellers ensures the health and vitality of the Exchange and encourages robust interest in the Exchange's operations, which promotes effective, efficient markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the changes proposed are limited to ownership of the Exchange and an affiliate of a facility of the Exchange and do not change the operation of the Exchange or any facility of the Exchange. The proposed rule change is not designed to address any competitive issue or have any impact on competition; rather the proposed rule change lays out the transfer ownership interests.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2021–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2021–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2021–19, and should be submitted on or before October 6, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19864 Filed 9–14–21; 8:45 am]

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[28] *See* Securities Exchange Act Release No. 34–66871 (April 27, 2012) 77 FR 26323 (May 3, 2012) (Order granting approval of BOX Exchange).

[29] *See* Securities Exchange Act Release No. 74477 (March 11, 2015), 80 FR 13932 (March 17, 2015) (SR–BOX–2015–14).

[30] *See* Securities Exchange Act Release No. 74403 (March 18, 2016), 81 FR 15772 (March 24, 2016) (SR–BOX–2016–12).

[31] 15 U.S.C. 78f(b)(1).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92909; File No. SR–NYSEARCA–2021–76]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Expiration Date of the Temporary Amendments to Rules 9261 and 9830

September 9, 2021.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 27, 2021, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes extending the expiration date of the temporary amendments to Rules 10.9261 and 10.9830 as set forth in SR–NYSEArca–2020–85 from August 31, 2021, to December 31, 2021, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change would not make any changes to the text of NYSE Arca Rules 10.9261 and 10.9830. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 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 extending the expiration date of the temporary amendments as set forth in SR–NYSEArca–2020–85 [4] to Rules 10.9261 (Evidence and Procedure in Hearing) and 10.9830 (Hearing) from August 31, 2021, to December 31, 2021, to harmonize with recent changes by FINRA to extend the expiration date of the temporary amendments to its Rules 9261 and 9830. SR–NYSEArca–2020–85 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing COVID–19 pandemic. The proposed rule change would not make any changes to the text of Exchange Rules 10.9261 and 10.9830.[5]

Background

In 2019, NYSE Arca adopted disciplinary rules based on the text of the Rule 8000 and Rule 9000 Series of its affiliate NYSE American LLC (''NYSE American''), with certain changes. The NYSE American disciplinary rules are, in turn, substantially the same as the Rule 8000 Series and Rule 9000 Series of FINRA and the New York Stock Exchange LLC.[6] The NYSE Arca disciplinary rules were implemented on May 27, 2019.[7]

In adopting disciplinary rules modeled on FINRA's rules, NYSE Arca adopted the hearing and evidentiary processes set forth in Rule 10.9261 and in Rule 10.9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 10.9800 Series. As adopted, the text of Rule 10.9261 and Rule 10.9830 are substantially the same as the FINRA rules with certain modifications.[8]

In response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities, on August 31, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness, SR–FINRA–2020–027, which allowed FINRA's Office of Hearing Officers (''OHO'') to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. Among the rules FINRA amended were Rules 9261 and 9830.[9]

Given that FINRA and OHO administers disciplinary hearings on the Exchange's behalf, and that the public health concerns addressed by FINRA's amendments apply equally to Exchange disciplinary hearings, on September 23, 2020, the Exchange filed to temporarily amend Rule 10.9261 and Rule 10.9830 to permit FINRA to conduct virtual hearings on its behalf.[10] In December 2020, FINRA filed a proposed rule change, SR–FINRA–2020–042, to extend the expiration date of the temporary amendments in SR–FINRA–2020–027 from December 31, 2020, to April 30, 2021.[11] On December 22, 2020, the Exchange similarly filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to April 30, 2021.[12] On April 1, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–006, to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from April 30, 2021, to August 31, 2021.[13] On April 20, 2021, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to August 31, 2021, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[14]

As outlined in detail below, while there are signs of improvement, based on FINRA's assessment of current COVID–19 conditions and the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and

[4] *See* Securities Exchange Act Release No. 90088 (October 5, 2020), 85 FR 64186 (October 9, 2020) (SR–NYSEArca–2020–85) (''SR–NYSEArca–2020–85'').

[5] The Exchange may submit a separate rule filing to extend the expiration date of the proposed extension beyond December 31, 2021 if the Exchange requires additional temporary relief from the rule requirements identified in SR–NYSEArca–2020–85. The amended NYSE Arca rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

[6] *See* Securities Exchange Act Release No. 85639 (April 12, 2019), 84 FR 16346 (April 18, 2019) (SR–NYSEArca–2019–15) (''2019 Notice'').

[7] *See* NYSE Arca Equities RB–19–060 & NYSE Arca Options RB–19–02 (April 26, 2019).

[8] *See* 2019 Notice, 84 FR at 16365 & 16373–4.

[9] *See* Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR–FINRA–2020–027) (''SR–FINRA–2020–027'').

[10] *See* note 3, *supra.*

[11] *See* Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR–FINRA–2020–042).

[12] *See* Securities Exchange Act Release No. 90820 (December 30, 2020), 86 FR 647 (January 6, 2021) (SR– NYSEArca–2020–116).

[13] *See* Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR–FINRA–2021–006).

[14] *See* Securities Exchange Act Release No. 91633 (April 22, 2021), 86 FR 22474 (April 28, 2021) (SR–NYSEArca–2021–27).

corresponding restrictions, FINRA determined that there is a continued need for temporary relief for several months beyond August 31, 2021. On August 13, 2021, FINRA accordingly filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from August 31, 2021, to December 31, 2021.[15]

Proposed Rule Change

Consistent with FINRA's recent proposal, the Exchange proposes to extend the expiration date of the temporary rule amendments to NYSE Arca Rules 10.9261 and 10.9830 as set forth in SR–NYSEArca–2020–85 from August 31, 2021, to December 31, 2021.

As set forth in SR–FINRA 2021–019, while there are signs of improvement, much uncertainty remains for the coming months. The emergence of the Delta variant, dissimilar vaccination rates throughout the United States, and the uptick in transmissions in many locations indicate that COVID–19 remains an active and real public health concern. Based on FINRA's assessment of current COVID–19 conditions and the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and corresponding restrictions, FINRA has determined that there is a continued need for this temporary relief for several months beyond August 31, 2021.[16] FINRA accordingly proposed to extend the expiration date of the temporary rule amendments from August 31, 2021, to December 31, 2021.

The Exchange proposes to similarly extend the expiration date of the temporary rule amendments to NYSE Arca Rules 10.9261 and 10.9830 as set forth in SR–NYSEArca–2020–85 from August 31, 2021, to December 31, 2021. The Exchange agrees with FINRA that much uncertainty remains for the coming months and that, based on the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and corresponding restrictions as set forth in SR–FINRA–2021–019, there is a continued need for temporary relief for several months beyond August 31, 2021. The proposed change would permit OHO to continue to assess, based on critical COVID–19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted in SR–FINRA–2021–019, in deciding whether to schedule a hearing by video conference, OHO may consider a variety of other factors in addition to COVID–19 trends. In SR–FINRA–2020–027, FINRA provided a non-exhaustive list of other factors OHO may take into consideration, including a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.[17] The Exchange believes that this is a reasonable procedure to continue to follow for hearings under Rules 9261 and 9830 chaired by a FINRA employee.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5),[19] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[20]

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change, which extends the expiration date of the temporary amendments to Exchange rules consistent with FINRA's extension to its Rules 9261 and 9830 for four months as set forth in SR–FINRA–2021–019, will permit the Exchange to continue to effectively conduct hearings during the COVID–19 pandemic. As noted above and in SR–FINRA–2021–019, given the current and frequently changing COVID–19 conditions and the uncertainty around when those conditions will see meaningful, widespread and sustained improvement, without this relief allowing OHO to proceed by video conference, some or all hearings may have to be postponed. The ability to conduct hearings by video conference will permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to continue to proceed without delay, thereby enabling the Exchange to continue to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

As set forth in detail in the SR–NYSEArca–2020–85, the temporary relief to permit hearings to be conducted via video conference maintains fair process and will continue to provide fair process consistent with Sections 6(b)(7) and 6(d) of the Act[21] while striking an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while avoiding the COVID–19-related public health risks for hearing participants. The Exchange notes that this proposal, like, like SR–NYSEArca–2020–85, provides only temporary relief. As proposed, the changes would be in place through August 31, 2021. As noted in SR–NYSEArca–2020–85 and above, the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.

Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

[15] *See* Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR–FINRA–2021–019) (''SR–FINRA–2021–019'').

[16] *See id.*

[17] *See* SR–FINRA–2020–027, 85 FR at 55715, n. 28; SR–FINRA–2021–019, 86 FR at 47170, n. 13.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78f(b)(7) & 78f(d).

[21] 15 U.S.C. 78f(b)(7) & 78f(d).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed temporary rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to provide continued temporary relief given the impacts of the COVID–19 pandemic and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on August 31, 2021.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [22] and subparagraph (f)(6) of Rule 19b–4 thereunder.[23]

A proposed rule change filed under Rule 19b–4(f)(6) [24] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has indicated that the proposed rule change to extend the expiration date will continue to prevent unnecessary impediments to its operations, including its critical adjudicatory processes, and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on August 31, 2021.[26] Importantly, extending the relief provided in SR–NYSEArca–2020–85 immediately upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of hearing participants.[27] The Commission also notes that this proposal extends without change the temporary relief previously provided by SR–NYSEArca–2020–85.[28] As proposed, the changes would be in place through December 31, 2021 and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[29] For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2021–76 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2021–76. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2021–76 and should be submitted on or before October 6, 2021.

[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] *See supra* Item II.

[27] *See* FINRA Filing, 86 FR at 47171 (noting the same in granting FINRA's request to waive the 30-day operative delay so that SR–FINRA–2021–019 would become operative immediately upon filing).

[28] *See supra* note 4.

[29] *See supra* note 5. As noted above, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond December 31, 2021, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[30] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92910; File No. SR–NYSEAMER–2021–37]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Expiration Date of the Temporary Amendments to Rules 9261 and 9830

September 9, 2021.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 27, 2021, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes extending the expiration date of the temporary amendments to Rules 9261 and 9830 as set forth in SR–NYSEAMER–2020–69 from August 31, 2021, to December 31, 2021, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change would not make any changes to the text of NYSE American Rules 9261 and 9830. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant 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 extending the expiration date of the temporary amendments as set forth in SR–NYSEAMER–2020–69[4] to Rules 9261 (Evidence and Procedure in Hearing) and 9830 (Hearing) from August 31, 2021, to December 31, 2021 to harmonize with recent changes by FINRA to extend the expiration date of the temporary amendments to its Rules 9261 and 9830. SR–NYSEAMER–2020–69 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing COVID–19 pandemic. The proposed rule change would not make any changes to the text of Exchange Rules 9261 and 9830.[5]

Background

In 2016, NYSE American (then known as NYSE MKT LLC) adopted disciplinary rules that are, with certain exceptions, substantially the same as the Rule 8000 Series and Rule 9000 Series of FINRA and its affiliate the New York Stock Exchange LLC (''NYSE''), and which set forth rules for conducting investigations and enforcement actions.[6] The NYSE American disciplinary rules were implemented on April 15, 2016.[7]

In adopting disciplinary rules modeled on FINRA's rules, NYSE American adopted the hearing and evidentiary processes set forth in Rule 9261 and in Rule 9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 9800 Series. As adopted, the text of Rule 9261 and Rule 9830 are substantially the same as the FINRA rules with certain modifications.[8]

In response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities, on August 31, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness, SR–FINRA–2020–027, which allowed FINRA's Office of Hearing Officers (''OHO'') to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. Among the rules FINRA amended were Rules 9261 and 9830.[9]

Given that FINRA and OHO administers disciplinary hearings on the Exchange's behalf, and that the public health concerns addressed by FINRA's amendments apply equally to Exchange disciplinary hearings, on September 15, 2020, the Exchange filed to temporarily amend Rule 9261 and Rule 9830 to permit FINRA to conduct virtual hearings on its behalf.[10] In December 2020, FINRA filed a proposed rule change, SR–FINRA–2020–042, to extend the expiration date of the temporary amendments in SR–FINRA–2020–027 from December 31, 2020, to April 30, 2021.[11] On December 22, 2020, the Exchange similarly filed to extend the temporary amendments to Rule 9261 and Rule 9830 to April 30, 2021.[12] On April 1, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–006, to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from April 30, 2021, to August 31, 2021.[13] On April 20, 2021, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to August 31, 2021, after which the temporary amendments will expire

[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 90085 (October 2, 2020), 85 FR 63603 (October 8, 2020) (SR–NYSEAMER–2020–69) (''SR–NYSEAMER–2020–69'').

[5] The Exchange may submit a separate rule filing to extend the expiration date of the proposed extension beyond December 31, 2021 if the Exchange requires additional temporary relief from the rule requirements identified in NYSEAMER–SR–2020–69. The amended NYSE American rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

[6] *See* Securities Exchange Act Release No. 77241 (February 26, 2016), 81 FR 11311 (March 3, 2016) (SR–NYSEMKT–2016–30) (''2016 Notice'').

[7] *See* NYSE MKT Information Memorandum 16–02 (March 14, 2016).

[8] *See* 2016 Notice, 18 FR at 11327 & 11332.

[9] *See* Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR–FINRA–2020–027) (''SR–FINRA–2020–027'').

[10] *See* note 4, *supra.*

[11] *See* Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR–FINRA–2020–042).

[12] *See* Securities Exchange Act Release No. 90823 (December 30, 2020), 86 FR 650 (January 6, 2021) (SR–NYSEAMER–2020–88).

[13] *See* Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR–FINRA–2021–006).

absent another proposed rule change filing by the Exchange.[14]

As outlined in detail below, while there are signs of improvement, based on FINRA's assessment of current COVID–19 conditions and the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and corresponding restrictions, FINRA determined that there is a continued need for temporary relief for several months beyond August 31, 2021. On August 13, 2021, FINRA accordingly filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from August 31, 2021, to December 31, 2021.[15]

Proposed Rule Change

Consistent with FINRA's recent proposal, the Exchange proposes to extend the expiration date of the temporary rule amendments to NYSE American Rules 9261 and 9830 as set forth in SR–NYSEAMER–2020–69 from August 31, 2021, to December 31, 2021.

As set forth in SR–FINRA 2021–019, while there are signs of improvement, much uncertainty remains for the coming months. The emergence of the Delta variant, dissimilar vaccination rates throughout the United States, and the uptick in transmissions in many locations indicate that COVID–19 remains an active and real public health concern. Based on FINRA's assessment of current COVID–19 conditions and the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and corresponding restrictions, FINRA has determined that there is a continued need for this temporary relief for several months beyond August 31, 2021.[16] FINRA accordingly proposed to extend the expiration date of the temporary rule amendments from August 31, 2021, to December 31, 2021.

The Exchange proposes to similarly extend the expiration date of the temporary rule amendments to NYSE American Rules 9261 and 9830 as set forth in SR–NYSEAMER–2020–69 from August 31, 2021, to December 31, 2021. The Exchange agrees with FINRA that much uncertainty remains for the coming months and that, based on the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and corresponding restrictions as set forth in SR–FINRA–2021–019, there is a continued need for temporary relief for several months beyond August 31, 2021. The proposed change would permit OHO to continue to assess, based on critical COVID–19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted in SR–FINRA–2021–019, in deciding whether to schedule a hearing by video conference, OHO may consider a variety of other factors in addition to COVID–19 trends. In SR–FINRA–2020–027, FINRA provided a non-exhaustive list of other factors OHO may take into consideration, including a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.[17] The Exchange believes that this is a reasonable procedure to continue to follow for hearings under Rules 9261 and 9830 chaired by a FINRA employee.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5),[19] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[20]

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change, which extends the expiration date of the temporary amendments to Exchange rules consistent with FINRA's extension to its Rules 9261 and 9830 for four months as set forth in SR–FINRA–2021–019, will permit the Exchange to continue to effectively conduct hearings during the COVID–19 pandemic. As noted above and in SR–FINRA–2021–019, given the current and frequently changing COVID–19 conditions and the uncertainty around when those conditions will see meaningful, widespread and sustained improvement, without this relief allowing OHO to proceed by video conference, some or all hearings may have to be postponed. The ability to conduct hearings by video conference will permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to continue to proceed without delay, thereby enabling the Exchange to continue to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

As set forth in detail in the SR–NYSEAMER–2020–69, the temporary relief to permit hearings to be conducted via video conference maintains fair process and will continue to provide fair process consistent with Sections 6(b)(7) and 6(d) of the Act[21] while striking an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while avoiding the COVID–19-related public health risks for hearing participants. The Exchange notes that this proposal, like SR–NYSEAMER–2020–69, provides only temporary relief. As proposed, the

[14] *See* Securities Exchange Act Release No. 91631 (April 22, 2021), 86 FR 22471 (April 28, 2021) (SR–NYSEAMER–2021–23).

[15] *See* Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR–FINRA–2021–019) (''SR–FINRA–2021–019'').

[16] *See id.*

[17] *See* SR–FINRA–2020–027, 85 FR at 55715, n. 28; SR–FINRA–2021–019, 86 FR at 47170, n. 13.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78f(b)(7) & 78f(d).

[21] 15 U.S.C. 78f(b)(7) & 78f(d).

changes would be in place through December 31, 2021. As noted in SR–NYSEAMER–2020–69 and above, the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.

Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed temporary rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to provide continued temporary relief given the impacts of the COVID–19 pandemic and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on August 31, 2021.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [22] and subparagraph (f)(6) of Rule 19b–4 thereunder.[23]

A proposed rule change filed under Rule 19b–4(f)(6) [24] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has indicated that the proposed rule change to extend the expiration date will continue to prevent unnecessary impediments to its operations, including its critical adjudicatory processes, and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on August 31, 2021.[26] Importantly, extending the relief provided in SR–NYSEAMER–2020–69 immediately upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of hearing participants.[27] The Commission also notes that this proposal extends without change the temporary relief previously provided by SR–NYSEAMER–2020–69.[28] As proposed, the changes would be in place through December 31, 2021 and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[29] For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEAMER–2021–37 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–NYSEAMER–2021–37. 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; the Commission does not edit personal

[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] *See supra* Item II.

[27] *See* FINRA Filing, 86 FR at 47171 (noting the same in granting FINRA's request to waive the 30-day operative delay so that SR–FINRA–2021–019 would become operative immediately upon filing).

[28] *See supra* note 4.

[29] *See supra* note 5. As noted above, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond December 31, 2021, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[30] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2021–37 and should be submitted on or before October 6, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92907; File No. SR–NYSE–2021–47]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Expiration Date of the Temporary Amendments to Rules 9261 and 9830 as set Forth in SR–NYSE–2020–76

September 9, 2021.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 27, 2021, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes extending the expiration date of the temporary amendments to Rules 9261 and 9830 as set forth in SR–NYSE–2020–76 from August 31, 2021, to December 31, 2021, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change would not make any changes to the text of NYSE Rules 9261 and 9830. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant 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 extending the expiration date of the temporary amendments as set forth in SR–NYSE–2020–76[4] to Rules 9261 (Evidence and Procedure in Hearing) and 9830 (Hearing) from August 31, 2021, to December 31, 2021 to harmonize with recent changes by FINRA to extend the expiration date of the temporary amendments to its Rules 9261 and 9830. SR–NYSE–2020–76 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing COVID–19 pandemic. The proposed rule change would not make any changes to the text of Exchange Rules 9261 and 9830.[5]

Background

In 2013, the NYSE adopted disciplinary rules that are, with certain exceptions, substantially the same as the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.[6] The NYSE disciplinary rules were implemented on July 1, 2013.[7]

In adopting disciplinary rules modeled on FINRA's rules, the NYSE adopted the hearing and evidentiary processes set forth in Rule 9261 and in Rule 9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 9800 Series. As adopted, the text of Rule 9261 is identical to the counterpart FINRA rule. Rule 9830 is substantially the same as FINRA's rule, except for conforming and technical amendments.[8]

In response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities, on August 31, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness, SR–FINRA–2020–027, which allowed FINRA's Office of Hearing Officers (''OHO'') to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. Among the rules FINRA amended were Rules 9261 and 9830.[9]

Given that FINRA and OHO administers disciplinary hearings on the Exchange's behalf, and that the public health concerns addressed by FINRA's amendments apply equally to Exchange disciplinary hearings, on September 15, 2020, the Exchange filed to temporarily amend Rule 9261 and Rule 9830 to permit FINRA to conduct virtual hearings on its behalf.[10] In December 2020, FINRA filed a proposed rule change, SR–FINRA–2020–042, to extend the expiration date of the temporary amendments in SR–FINRA–2020–027 from December 31, 2020, to April 30, 2021.[11] On December 22, 2020, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to April 30, 2021.[12] On April 1, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–006, to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from April

[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 90024 (September 28, 2020), 85 FR 62353 (October 2, 2020) (SR–NYSE–2020–76) (''SR–NYSE–2020–76'').

[5] The Exchange may submit a separate rule filing to extend the expiration date of the proposed extension beyond December 31, 2021 if the Exchange requires additional temporary relief from the rule requirements identified in NYSE–SR–2020–76. The amended NYSE rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

[6] *See* Securities Exchange Act Release No. 68678 (January 16, 2013), 78 FR 5213 (January 24, 2013) (SR–NYSE–2013–02) (''2013 Notice''), 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR–NYSE–2013–02) (''2013 Approval Order''), and 69963 (July 10, 2013), 78 FR 42573 (July 16, 2013) (SR–NYSE–2013–49).

[7] *See* NYSE Information Memorandum 13–8 (May 24, 2013).

[8] *See* 2013 Approval Order, 78 FR at 15394, n.7 & 15400; 2013 Notice, 78 FR at 5228 & 5234.

[9] *See* Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR–FINRA–2020–027) (''SR–FINRA–2020–027'').

[10] *See* note 4, *supra.*

[11] *See* Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR–FINRA–2020–042).

[12] *See* Securities Exchange Act Release No. 90821 (December 30, 2020), 86 FR 644 (January 6, 2021) (SR–NYSE–2020–107).

30, 2021, to August 31, 2021.[13] On April 20, 2021, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to August 31, 2021, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[14]

As outlined in detail below, while there are signs of improvement, based on FINRA's assessment of current COVID–19 conditions and the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and corresponding restrictions, FINRA determined that there is a continued need for temporary relief for several months beyond August 31, 2021. On August 13, 2021, FINRA accordingly filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from August 31, 2021, to December 31, 2021.[15]

Proposed Rule Change

Consistent with FINRA's recent proposal, the Exchange proposes to extend the expiration date of the temporary rule amendments to NYSE Rules 9261 and 9830 as set forth in SR–NYSE–2020–76 from August 31, 2021, to December 31, 2021.

As set forth in SR–FINRA 2021–019, while there are signs of improvement, much uncertainty remains for the coming months. The emergence of the Delta variant, dissimilar vaccination rates throughout the United States, and the uptick in transmissions in many locations indicate that COVID–19 remains an active and real public health concern. Based on FINRA's assessment of current COVID–19 conditions and the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and corresponding restrictions, FINRA has determined that there is a continued need for this temporary relief for several months beyond August 31, 2021.[16] FINRA accordingly proposed to extend the expiration date of the temporary rule amendments from August 31, 2021, to December 31, 2021.

The Exchange proposes to similarly extend the expiration date of the temporary rule amendments to NYSE Rules 9261 and 9830 as set forth in SR–NYSE–2020–76 from August 31, 2021, to December 31, 2021. The Exchange agrees with FINRA that much uncertainty remains for the coming months and that, based on the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and corresponding restrictions as set forth in SR–FINRA–2021–019, there is a continued need for temporary relief for several months beyond August 31, 2021. The proposed change would permit OHO to continue to assess, based on critical COVID–19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted in SR–FINRA–2021–019, in deciding whether to schedule a hearing by video conference, OHO may consider a variety of other factors in addition to COVID–19 trends. In SR–FINRA–2020–027, FINRA provided a non-exhaustive list of other factors OHO may take into consideration, including a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.[17] The Exchange believes that this is a reasonable procedure to continue to follow for hearings under Rules 9261 and 9830 chaired by a FINRA employee.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5),[19] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[20]

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change, which extends the expiration date of the temporary amendments to Exchange rules consistent with FINRA's extension to its Rules 9261 and 9830 for four months as set forth in SR–FINRA–2021–019, will permit the Exchange to continue to effectively conduct hearings during the COVID–19 pandemic. As noted above and in SR–FINRA–2021–019, given the current and frequently changing COVID–19 conditions and the uncertainty around when those conditions will see meaningful, widespread and sustained improvement, without this relief allowing OHO to proceed by video conference, some or all hearings may have to be postponed. The ability to conduct hearings by video conference will permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to continue to proceed without delay, thereby enabling the Exchange to continue to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

As set forth in detail in the SR–NYSE–2020–76, the temporary relief to permit hearings to be conducted via video conference maintains fair process and will continue to provide fair process consistent with Sections 6(b)(7) and 6(d) of the Act[21] while striking an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to

[13] *See* Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR–FINRA–2021–006).

[14] *See* Securities Exchange Act Release No. 91629 (April 22, 2021), 86 FR 22505 (April 28, 2021) (SR–NYSE–2021–27).

[15] *See* Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR–FINRA–2021–019) (''SR–FINRA–2021–019'').

[16] *See id.*

[17] *See* SR–FINRA–2020–027, 85 FR at 55715, n. 28; SR–FINRA–2021–019, 86 FR at 47170, n. 13.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78f(b)(7) & 78f(d).

[21] 15 U.S.C. 78f(b)(7) & 78f(d).

protect investors and maintain fair and orderly markets while avoiding the COVID–19-related public health risks for hearing participants. The Exchange notes that this proposal, like SR–NYSE–2020–76, provides only temporary relief. As proposed, the changes would be in place through December 31, 2021. As noted in SR–NYSE–2020–76 and above, the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.

Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed temporary rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to provide continued temporary relief given the impacts of the COVID–19 pandemic and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on August 31, 2021.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[22] and subparagraph (f)(6) of Rule 19b–4 thereunder.[23]

A proposed rule change filed under Rule 19b–4(f)(6)[24] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has indicated that the proposed rule change to extend the expiration date will continue to prevent unnecessary impediments to its operations, including its critical adjudicatory processes, and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on August 31, 2021.[26] Importantly, extending the relief provided in SR–NYSE–2020–76 immediately upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of hearing participants.[27] The Commission also notes that this proposal extends without change the temporary relief previously provided by SR–NYSE–2020–76.[28] As proposed, the changes would be in place through December 31, 2021 and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[29] For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2021–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2021–47. 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

[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] *See supra* Item II.

[27] *See* FINRA Filing, 86 FR at 47171 (noting the same in granting FINRA's request to waive the 30-day operative delay so that SR–FINRA–2021–019 would become operative immediately upon filing).

[28] *See supra* note 4.

[29] *See supra* note 5. As noted above, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond December 31, 2021, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[30] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2021–47 and should be submitted on or before October 6, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19852 Filed 9–14–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92908; File No. SR–NYSENAT–2021–16]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Expiration Date of the Temporary Amendments to Rules 10.9261 and 10.9830

September 9, 2021.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 27, 2021, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 extending the expiration date of the temporary amendments to Rules 10.9261 and 10.9830 as set forth in SR–NYSENAT–2020–31 from August 31, 2021, to December 31, 2021, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The proposed rule change would not make any changes to the text of NYSE National Rules 10.9261 and 10.9830. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant 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 extending the expiration date of the temporary amendments as set forth in SR–NYSENAT–2020–31[4] to Rules 10.9261 (Evidence and Procedure in Hearing) and 10.9830 (Hearing) from August 31, 2021, to December 31, 2021 to harmonize with recent changes by FINRA to extend the expiration date of the temporary amendments to its Rules 9261 and 9830. SR–NYSENAT–2020–31 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing COVID–19 pandemic. The proposed rule change would not make any changes to the text of Exchange Rules 10.9261 and 10.9830.[5]

Background

In 2018, NYSE National adopted disciplinary rules that are, with certain exceptions, substantially the same as the disciplinary rules of its affiliate NYSE American LLC, which are in turn substantially similar to the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.[6]

In adopting disciplinary rules modeled on FINRA's rules, NYSE National adopted the hearing and evidentiary processes set forth in Rule 10.9261 and in Rule 10.9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 10.9800 Series. As adopted, the text of Rule 10.9261 and Rule 10.9830 are substantially the same as the FINRA rules with certain modifications.[7]

In response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities, on August 31, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness, SR–FINRA–2020–027, which allowed FINRA's Office of Hearing Officers (''OHO'') to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. Among the rules FINRA amended were Rules 9261 and 9830.[8]

Given that FINRA and OHO administers disciplinary hearings on the Exchange's behalf, and that the public health concerns addressed by FINRA's amendments apply equally to Exchange disciplinary hearings, on September 29, 2020, the Exchange filed to temporarily amend Rule 10.9261 and Rule 10.9830 to permit FINRA to conduct virtual hearings on its behalf.[9] In December 2020, FINRA filed a proposed rule change, SR–FINRA–2020–042, to extend the expiration date of the temporary amendments in SR–FINRA–2020–027 from December 31, 2020, to April 30, 2021.[10] On December 22, 2020, the Exchange similarly filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to April 30, 2021.[11] On April 1, 2021, FINRA filed a proposed rule change, SR–FINRA–2021–006, to extend the expiration date of the temporary rule amendments to,

[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 90137 (October 8, 2020), 85 FR 65087 (October 14, 2020) (SR–NYSENAT–2020–31) (''SR–NYSENAT–2020–31'').

[5] The Exchange may submit a separate rule filing to extend the expiration date of the proposed extension beyond December 31, 2021 if the Exchange requires additional temporary relief from the rule requirements identified in SR–NYSENAT–2020–31. The amended NYSE National rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

[6] *See* Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968, 23976 (May 23, 2018) (SR–NYSENAT–2018–02) (''2018 Approval Order'').

[7] *See id.*

[8] *See* Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR–FINRA–2020–027) (''SR–FINRA–2020–027'').

[9] *See* note 4, *supra.*

[10] *See* Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR–FINRA–2020–042).

[11] *See* Securities Exchange Act Release No. 90822 (December 30, 2020), 86 FR 627 (January 6, 2021) (SR–NYSENAT–2020–39).

among other rules, FINRA Rule 9261 and 9830 from April 30, 2021, to August 31, 2021.[12] On April 20, 2021, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to August 31, 2021, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.[13]

As outlined in detail below, while there are signs of improvement, based on FINRA's assessment of current COVID–19 conditions and the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and corresponding restrictions, FINRA determined that there is a continued need for temporary relief for several months beyond August 31, 2021. On August 13, 2021, FINRA accordingly filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from August 31, 2021, to December 31, 2021.[14]

Proposed Rule Change

Consistent with FINRA's recent proposal, the Exchange proposes to extend the expiration date of the temporary rule amendments to NYSE National Rules 10.9261 and 10.9830 as set forth in SR–NYSENAT–2020–31 from August 31, 2021, to December 31, 2021.

As set forth in SR–FINRA 2021–019, while there are signs of improvement, much uncertainty remains for the coming months. The emergence of the Delta variant, dissimilar vaccination rates throughout the United States, and the uptick in transmissions in many locations indicate that COVID–19 remains an active and real public health concern. Based on FINRA's assessment of current COVID–19 conditions and the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and corresponding restrictions, FINRA has determined that there is a continued need for this temporary relief for several months beyond August 31, 2021.[15] FINRA accordingly proposed to extend the expiration date of the temporary rule amendments from August 31, 2021, to December 31, 2021.

The Exchange proposes to similarly extend the expiration date of the temporary rule amendments to NYSE National Rules 10.9261 and 10.9830 as set forth in SR–NYSENAT–2020–31 from August 31, 2021, to December 31, 2021. The Exchange agrees with FINRA that much uncertainty remains for the coming months and that, based on the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and corresponding restrictions as set forth in SR–FINRA–2021–019, there is a continued need for temporary relief for several months beyond August 31, 2021. The proposed change would permit OHO to continue to assess, based on critical COVID–19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted in SR–FINRA–2021–019, in deciding whether to schedule a hearing by video conference, OHO may consider a variety of other factors in addition to COVID–19 trends. In SR–FINRA–2020–027, FINRA provided a non-exhaustive list of other factors OHO may take into consideration, including a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.[16] The Exchange believes that this is a reasonable procedure to continue to follow for hearings under Rules 9261 and 9830 chaired by a FINRA employee.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5),[18] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[19]

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed rule change, which extends the expiration date of the temporary amendments to Exchange rules consistent with FINRA's extension to its Rules 9261 and 9830 for four months as set forth in SR–FINRA–2021–019, will permit the Exchange to continue to effectively conduct hearings during the COVID–19 pandemic. As noted above and in SR–FINRA–2021–019, given the current and frequently changing COVID–19 conditions and the uncertainty around when those conditions will see meaningful, widespread and sustained improvement, without this relief allowing OHO to proceed by video conference, some or all hearings may have to be postponed. The ability to conduct hearings by video conference will permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to continue to proceed without delay, thereby enabling the Exchange to continue to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

As set forth in detail in SR–NYSENAT–2020–31, the temporary relief to permit hearings to be conducted via video conference maintains fair process and will continue to provide fair process consistent with Sections 6(b)(7) and 6(d) of the Act[20] while

[12] *See* Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR–FINRA–2021–006).

[13] *See* Securities Exchange Act Release No. 91634 (April 22, 2021), 86 FR 22477 (April 28, 2021) (SR–NYSENAT–2021–11).

[14] *See* Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR–FINRA–2021–019) (''SR–FINRA–2021–019'').

[15] *See id.*

[16] *See* SR–FINRA–2020–027, 85 FR at 55715, n. 28; SR–FINRA–2021–019, 86 FR at 47170, n. 13.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b)(7) & 78f(d).

[20] 15 U.S.C. 78f(b)(7) & 78f(d).

striking an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while avoiding the COVID–19-related public health risks for hearing participants. The Exchange notes that this proposal, like SR–NYSENAT–2020–31, provides only temporary relief. As proposed, the changes would be in place through December 31, 2021. As noted in SR–NYSENAT–2020–31 and above, the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.

Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed temporary rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to provide continued temporary relief given the impacts of the COVID–19 pandemic and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on August 31, 2021.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[21] and subparagraph (f)(6) of Rule 19b–4 thereunder.[22]

A proposed rule change filed under Rule 19b-4(f)(6)[23] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[24] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has indicated that the proposed rule change to extend the expiration date will continue to prevent unnecessary impediments to its operations, including its critical adjudicatory processes, and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on August 31, 2021.[25] Importantly, extending the relief provided in SR–NYSENAT–2020–31 immediately upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of hearing participants.[26] The Commission also notes that this proposal extends without change the temporary relief previously provided by SR–NYSENAT–2020–31.[27] As proposed, the changes would be in place through December 31, 2021 and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[28] For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[29]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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–NYSENAT–2021–16 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–NYSENAT–2021–16. 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

[21] 15 U.S.C. 78s(b)(3)(A)(iii).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] *See supra* Item II.

[26] *See* FINRA Filing, 86 FR at 47171 (noting the same in granting FINRA's request to waive the 30-day operative delay so that SR–FINRA–2021–019 would become operative immediately upon filing).

[27] *See supra* note 4.

[28] *See supra* note 5. As noted above, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond December 31, 2021, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[29] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2021–16 and should be submitted on or before October 6, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19853 Filed 9–14–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92915; File No. SR–CBOE–2021–050]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule Relating to Its Lead Market-Maker Incentive Programs

September 9, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 1, 2021, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its Fees Schedule with respect to its Lead Market-Maker (''LMM'') Incentive Programs. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule to amend: the Mini Russell 2000 Index (''MRUT'') options LMM Incentive Program; the MSCI EAFE Index (''MXEA'') options and MSCI Emerging Markets Index (''MXEF'') options LMM Incentive Program (*i.e.,* the MSCI LMM Incentive Program); and the Regular Trading Hours (''RTH'') S&P 500 ESG Index (''SPESG'') LMM Incentive Program, and to remove an expiring fee waiver, effective September 1, 2021.

Each LMM Incentive Program provides a rebate[3] to Trading Permit Holders (''TPHs'') with LMM appointments to the respective incentive program that meet certain quoting standards in the applicable series in a month. The Exchange notes that meeting or exceeding the quoting standards (both current and as proposed; described in further detail below) in each of the LMM Incentive Program products to receive the applicable rebate (both currently offered and as proposed; described in further detail below) is optional for an LMM appointed to a program. Rather, an LMM appointed to an incentive program is eligible to receive the corresponding rebate if it satisfies the applicable quoting standards, which the Exchange believes encourages the LMM to provide liquidity in the applicable class and trading session. The Exchange may consider other exceptions to the programs' quoting standards based on demonstrated legal or regulatory requirements or other mitigating circumstances. In calculating whether an LMM appointed to an incentive program meets the applicable program's quoting standards each month, the Exchange excludes from the calculation in that month the business day in which the LMM missed meeting or exceeding the quoting standards in the highest number of the applicable series.

MRUT LMM Incentive Program

The Exchange first proposes to amend its MRUT LMM Incentive Program. Currently, the program provides that if the appointed LMM in MRUT provides continuous electronic quotes during RTH that meet or exceed the program's heightened quoting standards[4] in at least 99% of the series 90% of the time in a given month, the LMM will receive a rebate[5] for that month in the amount of $20,000 (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month).

Specifically, the Exchange proposes to amend certain quotes widths contained in the MRUT LMM Incentive Program's heightened quoting standards. Currently, for expiring MRUT options (14 days or less), the appointed LMM must meet, among other heightened quoting standards, a $0.15 width for a quote size of 1 contract at a premium level of $1.01 to $3.00 and a $0.15 width for a quote size of 1 contract at a premium level of $3.01 to $5.00. The proposed rule change marginally decreases both such widths in these categories to $0.14. Currently, for MRUT options expiring in the near term (15 days to 60 days), the appointed LMM must meet, among other heightened quoting standards, a $0.15 width for a quote size of 1 contract at a premium level of $1.01 to $3.00, a $0.18 width for a quote size of one contract at a premium level of $3.01 to $5.00, and a $0.20 width for a quote size of 1 contract at a premium level of $5.01 to $10.00. The proposed rule change marginally decreases these widths to a $0.13 width, a $0.16 width, and a $0.18 width, respectively. The Exchange also proposes to increase the compensation payment offered by the MRUT LMM Incentive Program to an LMM appointed to the program for meeting the

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change updates the term ''payment'' to ''rebate'' in the MSCI and MRUT LMM Incentive Programs, which more accurately reflects the type of payment an LMM appointed to the MRUT or MSCI LMM Incentive Program is eligible to receive and is consistent with language in the other LMM Incentive Programs.

[4] Located in the ''MRUT LMM Incentive Program'' table in the Fees Schedule.

[5] *See supra* note 3.

heightened quoting standards in a month from $20,000 to $25,000.

The proposed rule change also makes a nonsubstantive, clarifying change to the language regarding the program's MRUT Volume Incentive Pool, which currently states that, ''in addition to the above rebate, if the appointed LMM meets or exceeds the above heightened quoting standards in a given month and provides an average daily volume (''ADV'') in MRUT that meets or exceeds 25,000 contracts in a given month, the LMM will receive the Monthly ADV Payment amount that corresponds to the level of ADV in MRUT for that month per the MRUT Volume Incentive Pool program below.'' As proposed, this language provides that, if in addition to the above rebate, if the appointed LMM meets or exceeds the above heightened quoting standards in a given month, the LMM will receive the Monthly ADV Payment amount that corresponds to the level of ADV provided by the LMM in MRUT for that month per the MRUT Volume Incentive Pool program below. The Exchange believes the updated language is simpler and more straightforward regarding the application of the MRUT Volume Incentive Pool program to an LMM that meets or exceeds the program's heightened quoting standards. The Exchange believes that the proposed rule change will encourage LMMs appointed to the MRUT LMM Incentive Program to strive to meet tighter width standards in MRUT options in order to receive the proposed higher rebate offered under the MRUT LMM Incentive Program. Tighter spreads generally signal an increase in activity from other market participants, contributing to overall deeper, more liquid markets, price discovery and transparency, and a robust market ecosystem to the benefit of all market participants.

In addition to this, the proposed rule change also makes a nonsubstantive change to the Fees Schedule by removing an expiring fee waiver in footnote 32 (and the locations in the Fees Schedule to which it is appended to MRUT options for Market-Maker and Firm transaction fees in the Rate Table—All Products Excluding Underlying Symbol List A), which provides that transaction fees for orders executed in MRUT options with a capacity code of ''F'', ''L'', or ''M'' will be waived through August 31, 2021. As intended, the waiver expired on August 31, 2021 and such orders will be assessed the standard transaction fees for orders submitted in MRUT options in a Market-Maker ($0.03 per contract) or Firm ($0.02 per contract) capacity.

MSCI (MXEA and MXEF) LMM Incentive Program

The Exchange proposes to amend its MSCI LMM Incentive Program. Currently, the program provides that if the appointed LMM in MXEA and MXEF options (collectively, ''MSCI options'') provides continuous electronic quotes during RTH that meet or exceed the heightened quoting standards [6] in at least 90% of the MXEA and MXEF series 80% of the time in a given month, the LMM will receive a rebate [7] for that month in the amount of $20,000 per class, per month.[8]

First, the Exchange proposes to amend the number of days for MSCI options to be considered as ''expiring'' and as ''near-term'' per the program. Specifically, the proposed rule change updates the days to expiry for MSCI options to be considered as expiring for purposes of the program from 7 days or less to 6 days or less and updates the days to expiry for MSCI options to be considered as near-term for the purposes of the program from 8 days to 60 days to 7 days to 60 days. The Exchange has observed that there is more significant demand for and participation in MSCI options with time to expiration of a week or more, whereas those options with less than a week to expiration tend to experience significantly less demand and participation, wherein it becomes more difficult for LMMs to quote within specified widths and sizes. As a result, the proposed rule change to update the days to expiry within the expiring and near-term categories is intended to delineate the expiry categories in a manner that better reflects the differences in market characteristics, and thus the difference in the difficulty in meeting the quoting standards that correspond to each, between options that expire in less than a week and options that expire in a week or more (up to 60 days).

Next, the Exchange proposes to amend certain quote widths and sizes contained in the MSCI LMM Incentive Program's heightened quoting standards. Currently, for expiring MSCI options, the appointed LMM must meet, among other heightened quoting standards, a $3.00 width for a quote size of 5 contracts at a premium of $1.01 to $3.00. The proposed rule change marginally decreases this width to $2.50. For MSCI options expiring in the near-term, the appointed LMM must currently meet, among other heightened quoting standards, a $1.20 width for a quote size of 20 contracts at a premium level of $0.00 to $5.00 and a $5.00 width for a quote size of 10 contracts at a premium level of $15.01 to $50.00. The proposed rule change marginally reduces these widths to $1.05 and $4.50, respectively. Additionally, the proposed rule change also slightly reduces the quote size standards for most all of the premium categories for MSCI options expiring in the near-term. More specifically, the proposed rule change reduces the quote size standard of 20 contracts at a premium level of $0.00 to $5.00 to 12 contracts, the quote size standard of 15 contracts at a premium level of $5.01 to $15.00 to 9 contracts, the quote size standard of 10 contracts at a premium level of $15.01 to $50.00 to 7 contracts, the quote size standard of 7 contracts at a premium level of $50.01 to $100.00 to 5 contracts, and the quote size standard of 3 contracts at a premium level of $100.01 to $200.00 to 2 contracts. For MSCI options expiring in the mid-term (61 days to 270 days), the appointed LMM must currently meet, among other heightened quoting standards, a $10.00 width for a quote size of 57 [sic] contracts at a premium of $15.01 to $50.00. The proposed rule change also marginally decreases this quote width to $9.00. The proposed rule change also slightly reduces the quote size standards for certain premium categories for MSCI options expiring in the mid-term by reducing the quote size standard of 15 contracts at a premium level of $0.00 to $5.00 to 10 contracts, the quote size standard of 10 contracts at a premium level of $5.01 to $15.00 to 8 contracts, and the quote size standard of 2 [sic] contracts at a premium level of $100.01 to $200.00 to 2 contracts.

The Exchange believes that the proposed tighter widths and smaller quote sizes for the MSCI LMM Incentive Program's heightened quoting requirements will incentivize LMMs appointed to the program to make tighter markets and quote more aggressively in MSCI options to receive the current rebate offered under the program, resulting in tighter spreads and increased liquidity to the benefits of investors.

RTH SPESG LMM Incentive Program

The Exchange proposes to amend the RTH SPESG LMM Incentive Program. Currently, the program provides that, if

[6] Located in the ''MSCI LMM Incentive Program'' table in the Fees Schedule.

[7] *See supra* note 3.

[8] The proposed rule change also makes a nonsubstantive clarifying change that makes it explicit that the monthly payment may be a pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month, consistent with language currently in each of the LMM Incentive Programs and the manner in which the MSCI LMM Incentive Program currently works today.

the appointed LMM provides continuous electronic quotes during RTH that meet or exceed the program's heightened quoting standards [9] in at least 60% of SPESG series 90% of the time in a given month, the LMM will receive a rebate for that month in the amount of a pro-rata share of a compensation pool equal to $50,000 (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month) for that month. If, for example, two LMMs meet the heightened continuous quoting standard in SPESG during a month, each will receive $25,000. If only one LMM meets the heightened continuous quoting standard in SPESG during a month, that LMM would receive $50,000 and the other one would receive nothing. The Exchange proposes to eliminate the compensation pool structure (and related explanatory language) currently applicable to the RTH SPESG LMM Incentive Program and adopt a flat-rate rebate structure per month, consistent with the current flat-rate rebate structure of the other LMM Incentive Programs. Specifically, the proposed rule change provides that if the appointed LMM provides continuous electronic quotes during RTH that meet or exceed the same heightened quoting standards in the same percentage of the series (60%) for the same percentage of the time (90%) in a given month, the LMM will receive a rebate for that month in the amount of $20,000 (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month) for that month.

The Exchange also proposes to offer an SPESG Volume Incentive Pool under the RTH SPESG LMM Incentive Program, like that offered under the MRUT LMM Incentive Program. Specifically, the proposed rule change to the program provides that, in addition to the above rebate (*i.e.,* the proposed $20,000 per month rebate), if the appointed LMM meets or exceeds the above heightened quoting standards in a given month, the LMM will receive the Monthly ADV Payment amount that corresponds to the level of ADV provided by the LMM in SPESG for that month per the SPESG Volume Incentive Pool program below.

SPESG ADV	Monthly ADV payment
0–999 contracts	$0.00
1,000–4,999 contracts	5,000
5,000–10,000 contracts	15,000
Greater than 10,000 contracts	20,000

[9] Located in the ''RTH SPESG LMM Incentive Program'' table in the Fees Schedule.

The proposed SPESG Volume Incentive Pool offered by the RTH SPESG LMM Incentive Program is designed to incentivize LMMs to further increase the provision of liquidity in SPESG options. Increased liquidity in SPESG options would, in turn, provide greater trading opportunities, added market transparency and enhanced price discovery for all market participants in SPESG.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[12] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

Regarding each of the LMM Incentive Programs generally, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to continue to offer these financial incentives, including as amended, to LMMs appointed to the programs, because it benefits all market participants trading in the corresponding products during RTH. These incentive programs encourage the LMMs appointed to such programs to satisfy the heightened quoting standards, which may increase liquidity and provide more trading opportunities and tighter spreads. Indeed, the Exchange notes that these LMMs serve a crucial role in providing quotes and the opportunity for market participants to trade MRUT, MSCI and SPESG options, as applicable, which can lead to increased volume, providing for robust markets. The Exchange ultimately offers the LMM Incentive Programs, as amended, to sufficiently incentive LMMs appointed to each incentive program to provide key liquidity and active markets in the corresponding program products during the corresponding trading sessions, and believes that these incentive programs, as amended, will continue to encourage increased quoting to add liquidity in each of the corresponding program products, thereby protecting investors and the public interest. The Exchange also notes that an LMM appointed to an incentive program may undertake added costs each month in order to satisfy that heightened quoting standards (*e.g.,* having to purchase additional logical connectivity).

Particularly, the Exchange believes that it is reasonable to amend certain widths and sizes in the heightened quoting standards under the MRUT and MSCI LMM Incentive Programs, as applicable. The Exchange believes the proposed rule change to tighten certain widths and reduce certain quote size standards in the MRUT and MSCI LMM Incentive Programs, as applicable, is reasonably designed to facilitate LMMs appointed to the MRUT and MSCI Incentive Programs to post tighter spreads and more aggressive quotes in MRUT and MSCI options, as applicable, in order to meet the heightened quoting standards and receive the rebate offered under the incentive program. An increase in quoting activity and tighter quotes tends to signal additional corresponding increase in order flow from other market participants, which benefits all investors by deepening the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange also believes that the proposed widths and sizes are reasonable because they remain generally aligned with the current heightened standards in each program, as the proposed widths and sizes are only marginally reduced in order to incentivize an increase in quoting activity and the provision of tighter markets. The Exchange also notes that another options exchange offers similar incentive programs with

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(4).

corresponding quote widths, sizes and premiums of comparable ranges.[13] Likewise, the Exchange believes that the proposed rule change to adopt an SPESG Volume Incentive Pool as part of the RTH SPESG LMM Incentive Program is reasonably designed to continue to encourage LMMs appointed to the incentive program to provide significant liquidity in SPESG options during RTH. The Exchange notes that the MRUT LMM Incentive Program also offers a volume incentive pool structured in a substantially similar manner.

The Exchange believes that it is reasonable to amend the number of days to expiration that comprise certain expiry categories in the MSCI LMM Incentive Programs as this update is reasonably designed to make it easier for the LMMs appointed to the incentive program to satisfy the heightened quoting standards for options expiring a certain number of days out, by better aligning the applicable category of heightened quoting standards with the level of demand for MSCI options that expire in less than a week versus a week or more out.

The Exchange believes that it is reasonable to amend the monthly rebate amounts applicable to the MRUT and RTH SPESG LMM Incentive Programs. The Exchange believes that the proposed increased rebate amounts are reasonably designed to continue to incentivize an appointed LMM to meet the applicable quoting standards for MRUT and SPESG options, thereby providing liquid and active markets, which facilitates tighter spreads, increased trading opportunities, and overall enhanced market quality to the benefit of all market participants. The Exchange believes that the proposed rule change to eliminate the compensation pool structure in the RTH SPESG LMM Incentive Program and replace it with a flat-rate rebate structure is reasonable because it is consistent with the flat-rate rebate structure currently applicable to each of the other LMM Incentive Programs. The Exchange further believes that the proposed rule change to amend the rebate amount received for MRUT ($25,000) and SPESG options ($20,000) is reasonable because it is comparable to the rebates offered by other LMM Incentive Programs. For example, the MSCI LMM Program currently offers $20,000 per each class (MXEF and MXEA) in which the heightened quoting standards are met in a given month and the GTH VIX/VIXW LMM Incentive Program offers $15,000 for VIX options in which the quoting standards are met in VIX options a given month.

The Exchange believes that the proposed changes to the LMM Incentive Programs are equitable and not unfairly discriminatory. The Exchange believes that it is equitable and not unfairly discriminatory to amend certain quoting widths and sizes in the MRUT and MSCI LMM Incentive Program, to adopt a volume incentive pool for the RTH SPESG LMM Incentive Program and to update the number of days to expiration for certain expiry categories in the MSCI LMM Incentive Program because such quote widths and sizes, volume pool program and expiry categories will equally apply to any and all TPHs with LMM appointments to the MRUT, MSCI and RTH SPESG LMM Incentive Programs, as applicable, that seek to meet the programs' heightened quoting standards in order to receive the rebates offered (both current and proposed, as applicable) under each respective program. The Exchange believes the proposed rebates applicable to the MRUT and RTH SPESG LMM Incentive Programs are equitable and not unfairly discriminatory because they, too, will equally apply to any TPH that is appointed as an LMM to the MRUT and RTH SPESG LMM Incentive Programs. Additionally, if an LMM appointed to any of the LMM Incentive Programs does not satisfy the corresponding heightened quoting standard for any given month, then it simply will not receive the rebate offered by the respective program for that month.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes the proposed rule change does impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes to existing LMM Incentive Programs will apply to all LMMs appointed to the applicable program classes (*i.e.,* MRUT, MXEF, MXEA and SPESG) in a uniform manner. To the extent these LMMs appointed to an incentive program receive a benefit that other market participants do not, as stated, these LMMs in their role as Mark-Makers on the Exchange have different obligations and are held to different standards. For example, Market-Makers play a crucial role in providing active and liquid markets in their appointed products, thereby providing a robust market which benefits all market participants. Such Market-Makers also have obligations and regulatory requirements that other participants do not have. The Exchange also notes that an LMM appointed to an incentive program may undertake added costs each month to satisfy that heightened quoting standards (*e.g.,* having to purchase additional logical connectivity). The Exchange also notes that the incentive programs are designed to attract additional order flow to the Exchange, wherein greater liquidity benefits all market participants by providing more trading opportunities, tighter spreads, and added market transparency and price discovery, and signals to other market participants to direct their order flow to those markets, thereby contributing to robust levels of liquidity.

The Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act as the LMM Incentive Programs apply only to transactions in products exclusively listed on Cboe Options. Additionally, as noted above, the incentive programs are designed to attract additional order flow to the Exchange, wherein greater liquidity benefits all market participants by providing more trading opportunities, tighter spreads, and added market transparency and price discovery, and signals to other market participants to direct their order flow to those markets, thereby contributing to robust levels of liquidity. The Exchange notes it operates in a highly competitive market. In addition to Cboe Options, TPHs have numerous alternative venues that they may participate on and director their order flow, including 15 other options exchanges, as well as off-exchange venues, where competitive products are available for trading. Based on publicly available information, no single options exchange has more than 15% of the market share of executed volume of options trades.[14] Therefore, no exchange possesses significant pricing power in the execution of option order flow. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues

[13] *See e.g.,* Nasdaq Phlx Options 7 Pricing Schedule, Section 5.B, XND Incentive Program.

[14] See Cboe Global Markets, U.S. Options Market Volume Summary by Month (August 24, 2021), available at *http://markets.cboe.com/us/options/market_share/.*

and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [15] The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. Securities and Exchange Commission, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[16] Accordingly, the Exchange does not believe its proposed changes to the incentive programs impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and paragraph (f) of Rule 19b–4 [18] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

[15] See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[16] NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f).

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–CBOE–2021–050 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–CBOE–2021–050. 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–CBOE–2021–050 and should be submitted on or before October 6, 2021.

[19] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19860 Filed 9–14–21; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17163 and #17164; New York Disaster Number NY–00206]

Administrative Declaration of a Disaster for the State of New York

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of New York dated 09/09/2021.

Incident: Severe Storms and Flooding.

Incident Period: 07/16/2021 through 07/19/2021.

DATES: Issued on 09/09/2021.

Physical Loan Application Deadline Date: 11/08/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 06/09/2022.

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: Otsego.

Contiguous Counties:

New York: Chenango, Delaware, Herkimer, Madison, Montgomery, Oneida, Schoharie.

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

	Percent
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 17163 6 and for economic injury is 17164 0.

The State which received an EIDL Declaration # is New York.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2021–19883 Filed 9–14–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17159 and #17160; New York Disaster Number NY–00204]

Administrative Declaration of a Disaster for the State of New York

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of New York dated 09/09/2021.

Incident: Severe Storms and Flooding.

Incident Period: 07/14/2021.

DATES: Issued on 09/09/2021.

Physical Loan Application Deadline Date: 11/08/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 06/09/2022.

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: Rensselaer.

Contiguous Counties:

New York: Albany, Columbia, Greene, Saratoga, Washington.

Vermont: Bennington.

Massachusetts: Berkshire.

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 17159 6 and for economic injury is 17160 0.

The States which received an EIDL Declaration # are New York, Massachusetts, Vermont.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2021–19877 Filed 9–14–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 17155 and # 17156; North Carolina Disaster Number NC–00127]

Presidential Declaration of a Major Disaster for the State of North Carolina

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–4617–DR), dated 09/08/2021.

Incident: Remnants of Tropical Storm Fred.

Incident Period: 08/16/2021 through 08/18/2021.

DATES: Issued on 09/08/2021.

Physical Loan Application Deadline Date: 11/08/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 06/08/2022.

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 President's major disaster declaration on 09/08/2021, 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 (Physical Damage and Economic Injury Loans): Buncombe, Haywood, Transylvania.

Contiguous Counties (Economic Injury Loans Only):

North Carolina: Henderson, Jackson, Madison, McDowell, Rutherford, Swain, Yancey.

South Carolina: Greenville, Oconee, Pickens.

Tennessee: Cocke, Sevier.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere ...	3.125
Homeowners without Credit Available Elsewhere ...	1.563
Businesses with Credit Available Elsewhere ...	5.710
Businesses without Credit Available Elsewhere ...	2.855
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 ...	2.855
Non-Profit Organizations without Credit Available Elsewhere ...	2.000

The number assigned to this disaster for physical damage is 17155 8 and for economic injury is 17156 0.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2021–19869 Filed 9–14–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 17157 and # 17158; North Carolina Disaster Number NC–00128]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of North Carolina

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Carolina (FEMA–4617–DR), dated 09/08/2021.

Incident: Remnants of Tropical Storm Fred.

Incident Period: 08/16/2021 through 08/18/2021.

DATES: Issued on 09/08/2021.

Physical Loan Application Deadline Date: 11/08/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 06/08/2022.

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 President's major disaster declaration on 09/08/2021, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications 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: Avery, Buncombe, Haywood, Madison, Transylvania, Watauga, Yancey.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.000
Non-Profit Organizations without Credit Available Elsewhere	2.000
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.000

The number assigned to this disaster for physical damage is 17157 8 and for economic injury is 17158 0.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2021–19867 Filed 9–14–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17039 and #17040; Michigan Disaster Number MI–00099]

Presidential Declaration Amendment of a Major Disaster for the State of Michigan

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Michigan (FEMA–4607–DR), dated 07/15/2021.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 06/25/2021 through 06/26/2021.

DATES: Issued on 09/04/2021.

Physical Loan Application Deadline Date: 10/13/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 04/15/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of MICHIGAN, dated 07/15/2021, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 10/13/2021.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2021–19868 Filed 9–14–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17161 and #17162; New York Disaster Number NY–00205]

Administrative Declaration of a Disaster for the State of New York

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of New York dated 09/09/2021.

Incident: Severe Storms and Flooding.

Incident Period: 07/20/2021.

DATES: Issued on 09/09/2021.

Physical Loan Application Deadline Date: 11/08/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 06/09/2022.

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: Niagara.

Contiguous Counties:

New York: Erie, Genesee, Orleans.

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 17161 6 and for economic injury is 17162 0.

The States which received an EIDL Declaration # is New York.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2021–19878 Filed 9–14–21; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice 11488]

60-Day Notice of Proposed Information Collection: U.S. Passport Renewal Application for Eligible Individuals

ACTION: Notice of request for public comment.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 60 days for public comment.

DATES: The Department will accept comments from the public up to *November 15, 2021.*

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2021–0021'' in the Search field. Then click the ''Comment Now'' button and complete the comment form. Email and regular mail options have been suspended to centralize receiving and addressing all comments in a timely manner.
- Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents to *Passport-Form-Comments@State.gov.* You must include the DS form number (if applicable), information collection title, and the OMB control number in the email subject line.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* U.S. Passport Renewal Application for Eligible Individuals.
- *OMB Control Number:* 1405–0020.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services (CA/PPT).
- *Form Number:* DS–0082.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 6,176,883.
- *Estimated Number of Responses:* 6,176,883.
- *Average Time per Response:* 40 minutes.
- *Total Estimated Burden Time:* 4,117,922 hours per year.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- 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.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The U.S. Passport Renewal Application for Eligible Individuals (Form DS–82) is used by eligible citizens and non-citizen nationals (hereinafter, collectively referred to as ''nationals'') of the United States who need to renew their current or recently expired U.S. passport (a travel document attesting to one's identity and U.S. nationality).

This form has been amended based on a change in Department policy. The Department's new policy permits passport applicants to select the gender marker on their passport without presenting medical documentation of gender transition. This policy change includes updating forms to add a third gender marker ''X'' for applicants identifying as non-binary, intersex, and/or gender non-conforming (in addition to the existing ''M'' and ''F'' gender markers).

Methodology

Passport Services collects information from U.S. nationals when they complete and submit the DS–82, ''U.S. Passport Renewal Application for Eligible Individuals.'' Passport applicants can either download the DS–82 from the internet or obtain the form from an Acceptance Facility/Passport Agency. The form must be completed, signed, and submitted by mail or in person at an acceptance facility, passport agency, or U.S. embassy/consulate (if abroad).

Rachel M. Arndt,

Deputy Assistant Secretary, Bureau of Consular Affairs, Passport Services, Department of State.

[FR Doc. 2021–19832 Filed 9–14–21; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 11489]

60-Day Notice of Proposed Information Collection: Application for a U.S. Passport: Corrections, Name Change Within 1 Year of Passport Issuance, and Limited Passport Holders

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to November 15, 2021.

ADDRESSES: You may submit comments by the following method:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2021–0022'' in the Search field. Then click the ''Comment Now'' button and complete the comment form. Email and regular mail options have been suspended to centralize receiving and addressing all comments in a timely manner.
- Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents to *Passport-Form-Comments@State.gov.* You must include the DS form number

(if applicable), information collection title, and the OMB control number in the email subject line.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Application for a U.S. Passport: Corrections, Name Change Within 1 Year of Passport Issuance, And Limited Passport Holders.
- *OMB Control Number:* 1405–0160.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services (CA/PPT).
- *Form Number:* DS–5504.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 138,000.
- *Estimated Number of Responses:* 138,000.
- *Average Time per Response:* 40 minutes.
- *Total Estimated Burden Time:* 92,000 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- 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.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Application for a U.S. Passport: Corrections, Name Change Within 1 Year of Passport Issuance, And Limited Passport Holders (DS–5504) is the form used by current passport holders who need to re-apply for a passport, at no charge.

This form has been amended based on a change in Department policy. The Department's new policy permits passport applicants to select the gender marker on their passport without presenting medical documentation of gender transition. This policy change includes updating forms to add a third gender marker ''X'' for applicants identifying as non-binary, intersex, and/or gender non-conforming (in addition to the existing ''M'' and ''F'' gender markers).

Methodology

Passport Services collects information from U.S. citizens and non-citizen nationals when they complete and submit the DS–5504, ''Application for a U.S. Passport: Corrections, Name Change Within 1 Year of Passport Issuance, And Limited Passport Holders''. Passport applicants can either download the DS–5504 from the internet or obtain the form from an Acceptance Facility/Passport Agency. The form must be completed, signed, and be submitted by mail (or in person at Passport Agencies domestically or embassies/consulates overseas).

Rachel M. Arndt,

Deputy Assistant Secretary, Bureau of Consular Affairs, Passport Services, Department of State.

[FR Doc. 2021–19837 Filed 9–14–21; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Delegation of Authority No. 517]

Delegation of Authority Under Presidential Proclamation (PP) 10043 To Determine That an Applicant's Entry is in the National Interest

By virtue of the authority vested in the Secretary of State by the laws of the United States, including Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a) and the Presidential Proclamation of May 29, 2020 titled *Suspension of Entry as Nonimmigrants of Certain Students and Researchers From the People's Republic of China,* I hereby delegate to the Assistant Secretary for Consular Affairs, to the extent authorized by law, the authority under section 2(a)(vii) of said Presidential Proclamation to determine that an applicant's entry into the United States would be in the national interest.

The Secretary, Deputy Secretary, Deputy Secretary for Management and Resources, and the Under Secretary for Management may exercise any function or authority delegated by this delegation. The authorities delegated herein may be re-delegated, to the extent authorized by law.

This Delegation of Authority does not supersede or otherwise affect any other delegation of authority currently in effect and will be published in the **Federal Register**.

Dated: August 25, 2021.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2021–19933 Filed 9–14–21; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 11487]

60-Day Notice of Proposed Information Collection: Application for a U.S. Passport

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to November 15, 2021.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2021–0020'' in the Search field. Then click the ''Comment Now'' button and complete the comment form. Email and regular mail options have been suspended to centralize receiving and addressing all comments in a timely manner.
- Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents to *Passport-Form-Comments@State.gov.* You must include the DS form number (if applicable), information collection title, and the OMB control number in the email subject line.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Application for a U.S. Passport.
- *OMB Control Number:* 1405–0004.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support (CA/PPT/S/PMO).
- *Form Number:* DS–11.

- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 9,217,667.
- *Estimated Number of Responses:* 9,217,667.
- *Average Time per Response:* 85 minutes.
- *Total Estimated Burden Time:* 13,058,362 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- 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.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The DS–11 solicits data necessary for Passport Services to issue a United States passport (book and/or card format) pursuant to authorities granted to the Secretary of State by 22 U.S.C. 211a *et seq.,* and Executive Order (E.O.) 11295 (August 5, 1966) for the issuance of passports to U.S. nationals. The issuance of U.S. passports requires the determination of identity, nationality, and entitlement with reference to the provisions of Title III of the Immigration and Nationality Act (INA) (8 U.S.C. 1401–1504), the 14th Amendment to the Constitution of the United States, other applicable treaties and laws, and implementing regulations at 22 CFR parts 50 and 51. The specific regulations pertaining to the Application for a U.S. Passport are at 22 CFR 51.20 through 51.28.

This form has been amended based on a change in Department policy. The Department's new policy permits passport applicants to select the gender marker on their passport without presenting medical documentation of gender transition. This policy change includes updating forms to add a third gender marker ''X'' for applicants identifying as non-binary, intersex, and/or gender non-conforming (in addition to the existing ''M'' and ''F'' gender markers).

Methodology

The information collected on the DS–11 is used to facilitate the issuance of passports to U.S. citizens and nationals. The primary purpose of soliciting the information is to establish citizenship, identity, and entitlement to the issuance of a U.S. passport, and to properly administer and enforce the laws pertaining to the issuance thereof.

Passport Services collects information from U.S. citizens and non-citizen nationals when they complete and submit the Application for a U.S. Passport. Passport applicants can either download the DS–11 from the internet or obtain one from an Acceptance Facility/Passport Agency or U.S. embassy/consulate abroad. The form must be completed and executed at an acceptance facility, passport agency, or U.S. embassy/consulate (if abroad), and submitted with evidence of citizenship and identity.

Rachel M. Arndt,

Deputy Assistant Secretary, Bureau of Consular Affairs, Passport Services, Department of State.

[FR Doc. 2021–19835 Filed 9–14–21; 8:45 am]

BILLING CODE 4710–06–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2021–0016]

Request for Comments on Significant Foreign Trade Barriers for the National Trade Estimate Report

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR), through the Trade Policy Staff Committee (TPSC), publishes the National Trade Estimate Report on Foreign Trade Barriers (NTE Report) each year. USTR invites comments to assist it and the TPSC in identifying significant barriers to U.S. exports of goods and services, U.S. foreign direct investment, and the protection and enforcement of intellectual property rights for inclusion in the NTE Report. USTR also will consider responses to this notice as part of the annual review of the operation and effectiveness of all U.S. trade agreements regarding telecommunications products and services that are in force with respect to the United States.

DATES: October 26, 2021 at midnight EST: Deadline for submission of comments.

ADDRESSES: USTR strongly prefers electronic submissions made through the Federal eRulemaking Portal: *http://www.regulations.gov* (*Regulations.gov*). The instructions for submitting comments are in section IV below. The docket number is USTR–2021–0016. For alternatives to online submissions, please contact Spencer Smith at *Spencer.L.Smith2@ustr.eop.gov* or (202) 395–2974 before transmitting a comment and in advance of the deadline.

FOR FURTHER INFORMATION CONTACT: Spencer Smith at *Spencer.L.Smith2@ustr.eop.gov* or (202) 395–2974.

SUPPLEMENTARY INFORMATION:

I. Background

Section 181 of the Trade Act of 1974 as amended (19 U.S.C. 2241), requires USTR annually to publish the NTE Report, which sets out an inventory of the most significant foreign barriers affecting U.S. exports of goods and services, including agricultural commodities, U.S. intellectual property, U.S. foreign direct investment by U.S. persons, especially if such investment has implications for trade in goods or services, and U.S. electronic commerce. The inventory facilitates U.S. negotiations aimed at reducing or eliminating these barriers and is a valuable tool in enforcing U.S. trade laws and strengthening the rules-based trading system. You can find the 2021 NTE Report on USTR's website at *https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications.* To ensure compliance with the statutory mandate for the NTE Report and the Administration's commitment to focus on the most significant foreign trade barriers, USTR will take comments in response to this notice into account in deciding which restrictions to include in the NTE Report.

II. Topics on Which the TPSC Seeks Information

To assist USTR in preparing the NTE Report, commenters should submit information related to one or more of the following categories of foreign trade barriers:

1. *Import policies.* Examples include tariffs and other import charges, quantitative restrictions, import licensing, pre-shipment inspection, customs barriers and shortcomings in trade facilitation or in valuation

practices, and other market access barriers.

2. *Technical barriers to trade.* Examples include unnecessarily trade restrictive or discriminatory standards, conformity assessment procedures, labeling, or technical regulations, including unnecessary or discriminatory technical regulations or standards for telecommunications products.

3. *Sanitary and phytosanitary measures.* Examples include measures applied to protect food safety, or animal and plant life or health that are unnecessarily trade restrictive, discriminatory, or not based on scientific evidence.

4. *Government procurement restrictions.* Examples include closed bidding and bidding processes that lack transparency.

5. *Intellectual property protection.* Examples include inadequate patent, copyright, and trademark regimes, trade secret theft, and inadequate enforcement of intellectual property rights.

6. *Services.* Examples include prohibitions or restrictions on foreign participation in the market, discriminatory licensing requirements or standards, local-presence requirements, and unreasonable restrictions on what services may be offered.

7. *Digital trade and electronic commerce.* Examples include barriers to cross-border data flows, including data localization requirements, discriminatory practices affecting trade in digital products, restrictions on the provision of internet-enabled services, and other restrictive technology requirements.

8. *Investment.* Examples include limitations on foreign equity participation and on access to foreign government-funded research and development programs, local content requirements, technology transfer requirements and export performance requirements, and restrictions on repatriation of earnings, capital, fees, and royalties.

9. *Subsidies, especially export subsidies and local content subsidies.* Examples of export subsidies include subsidies contingent upon export performance, and agricultural export subsidies that displace U.S. exports in third country markets. Examples of local content subsidies include subsidies contingent on the purchase or use of domestic rather than imported goods.

10. *Competition.* Examples include government-tolerated anticompetitive conduct of state-owned or private firms that restricts the sale or purchase of U.S. goods or services in the foreign country's markets or abuse of competition laws to inhibit trade; fairness and due process concerns by companies involved in competition investigatory and enforcement proceedings in the country.

11. *State-owned enterprises.* Examples include subsidies to and from industrial state-owned enterprises involved in the manufacture or production of non-agricultural goods or in the provision of services, as well as industrial state-owned enterprises that could contribute to overcapacity, or discriminating against foreign goods or services, acting inconsistently with commercial considerations in the purchase and sale of goods and services in cases in which these polices constitute significant barriers to, or distortions of, U.S. exports of goods and services, U.S. investment, or U.S. electronic commerce, which may negatively affect U.S. firms and workers.

12. *Labor.* Examples include concerns with failures by a government to protect internationally recognized worker rights, including through failures to eliminate forced labor, or failures to eliminate discrimination in respect of employment or occupation, in cases where these failures influence trade flows or investment decisions in ways that constitute significant barriers to, or distortions of, U.S. exports of goods and services, U.S. investment, or U.S. electronic commerce, which may negatively affect U.S. firms and workers. Internationally recognized worker rights include the right of association; the right to organize and bargain collectively; a prohibition on the use of any form of forced or compulsory labor; a minimum age for the employment of children, and a prohibition on the worst forms of child labor; and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

13. *Environment.* Examples include concerns with a government's levels of environmental protection, unsustainable stewardship of natural resources, and harmful environmental practices that constitute significant barriers to, or distortions of, U.S. exports of goods and services, U.S. investment, or U.S. electronic commerce, which may negatively affect U.S. firms and workers.

14. *Other barriers.* Examples include barriers that encompass more than one category, such as bribery and corruption, or that affect a single sector.

Commenters should submit information related to one or more of the following export markets to be covered in the report: Algeria, Angola, the Arab League, Argentina, Australia, Bahrain, Bangladesh, Bolivia, Brazil, Brunei, Cambodia, Canada, Chile, China, Colombia, Costa Rica, Cote d'Ivoire, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, the European Union, Ghana, Guatemala, Honduras, Hong Kong, India, Indonesia, Israel, Japan, Jordan, Kenya, Korea, Kuwait, Laos, Malaysia, Mexico, Morocco, New Zealand, Nicaragua, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, the Philippines, Qatar, Russia, Saudi Arabia, Singapore, South Africa, Switzerland, Taiwan, Thailand, Tunisia, Turkey, Ukraine, United Arab Emirates, United Kingdom, Uruguay, and Vietnam.

In addition, section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3106) (Section 1377) requires USTR annually to review the operation and effectiveness of U.S. telecommunications trade agreements that are in force with respect to the United States. The purpose of the review is to determine whether any foreign government that is a party to one of those agreements is failing to comply with that government's obligations or is otherwise denying, within the context of a relevant agreement, ''mutually advantageous market opportunities'' to U.S. telecommunication products or services suppliers. USTR will consider responses to this notice in the review called for in Section 1377.

Commenters should place particular emphasis on any practices that may violate U.S. trade agreements. USTR also is interested in receiving new or updated information pertinent to the barriers covered in the 2021 NTE Report as well as information on new barriers. If USTR does not include in the 2022 NTE Report information that it receives pursuant to this notice, it will maintain the information for potential use in future discussions or negotiations with trading partners.

III. Estimate of Increase in Exports

Each comment should include an estimate of the potential increase in U.S. exports, foreign direct investment, or electronic commerce that would result from removing any foreign trade barrier the comment identifies, as well as a description of the methodology the commenter used to derive the estimate. Commenters should express estimates within the following value ranges: Less than $25 million; $25 million to $100 million; $100 million to $500 million; and over $500 million.

IV. Requirements for Submissions

Persons submitting written comments must do so in English and must identify on the first page of the submission 'Comments Regarding Foreign Trade

Barriers to U.S. Exports for 2022 Reporting.' Commenters providing information on foreign trade barriers in more than one country should, whenever possible, provide a separate submission for each country.

The submission deadline is Tuesday, October 26, 2021, at midnight EST. USTR strongly encourages commenters to make online submissions, using *Regulations.gov*. To submit comments via *Regulations.gov*, enter docket number USTR–2021–0016 on the home page and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled 'comment now.' For further information on using *Regulations.gov*, please consult the resources provided on the website by clicking on 'How to Use *Regulations.gov*' on the bottom of the home page.

Regulations.gov allows users to submit comments by filling in a 'type comment' field, or by attaching a document using an 'upload file' field. USTR prefers that you provide comments in an attached document. If you attach a document, please identify the name of the country to which the submission pertains in the 'type comment' field, *e.g.,* see attached comments with respect to (name of country). USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If you use an application other than those two, please indicate the name of the application in the 'type comment' field.

Filers submitting comments containing no business confidential information (BCI) should name their file using the name of the person or entity submitting the comments. For any comments submitted electronically containing BCI, the file name of the business confidential version should begin with the characters 'BCI.' Clearly mark any page containing BCI with 'BUSINESS CONFIDENTIAL' on the top of that page. Filers of submissions containing BCI also must submit a public version of their comments that USTR will place in the docket for public inspection. The file name of the public version should begin with the character 'P.' Follow the 'BCI' and 'P' with the name of the person or entity submitting the comments.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

As noted, USTR strongly urges that you file submissions through *Regulations.gov*. You must make any alternative arrangements with Spencer Smith at *Spencer.L.Smith2@ustr.eop.gov* or (202) 395–2974 before transmitting a comment and in advance of the deadline.

USTR will post comments in the docket for public inspection, except properly designated BCI. You can view comments on the *Regulations.gov* by entering docket number USTR–2021–0016 in the search field on the home page. General information concerning USTR is available at *https://www.ustr.gov.*

Edward Gresser,

Chair of the Trade Policy Staff Committee, Office of the United States Trade Representative.

[FR Doc. 2021–19934 Filed 9–14–21; 8:45 am]

BILLING CODE 3290–F1–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Final Agency Actions on Proposed Railroad Project in California, on Behalf of the California High Speed Rail Authority

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

SUMMARY: FRA, on behalf of the California High-Speed Rail Authority (Authority), is issuing this notice to announce actions taken by the Authority that are final. By this notice, FRA is advising the public of the time limit to file a claim seeking judicial review of the actions related to a proposed railroad project, the California High-Speed Rail (HSR) Authority's Bakersfield to Palmdale Project Section (Project). These actions grant approvals for project implementation pursuant to the National Environmental Policy Act (NEPA) and other laws, regulations, and executive orders.

DATES: A claim seeking judicial review of the agency actions on the Project will be barred unless the claim is filed on or before September 15, 2023. If the Federal law that authorizes judicial review of a claim provides a time period of less than 2 years for filing such claim, then that shorter time period applies.

FOR FURTHER INFORMATION CONTACT:

For the Authority: Scott Rothenberg, NEPA Assignment Manager, Environmental Services, California High-Speed Rail Authority, telephone: (916) 403–6936; email: *Scott.Rothenberg@hsr.ca.gov.*

For FRA: Marlys Osterhues, Division Chief, Environment and Project Engineering, RPD, telephone: (202) 493–0413; email: *Marlys.Osterhues@dot.gov.*

SUPPLEMENTARY INFORMATION: Effective July 23, 2019, FRA assigned, and the State of California acting through the Authority assumed, environmental responsibilities for the California HSR System pursuant to 23 U.S.C. 327. Notice is given that the Authority has taken final agency actions subject to 23 U.S.C. 139(l)(1) and 49 U.S.C. 24201(a)(4) by issuing approvals for the Project.

The purpose of the California HSR System [1] is to provide a reliable, high-speed, electric-powered train system that links the major metropolitan areas of California, delivering predictable and consistent travel times. A further objective is to provide an interface with commercial airports, mass transit, and the highway network, and to relieve capacity constraints of the existing transportation system as increases in intercity travel demand in California occur, in a manner sensitive to and protective of California's unique natural resources. The Authority has selected Alternative 2 with the Refined César E. Chávez National Monument Design Option, Avenue M Maintenance Site and Maintenance-of-Way Facility, and the Palmdale Station identified in the Final Environmental Impact Statement (Final EIS) for the Project because the Selected Alternative (1) best satisfies the Purpose, Need, and Objectives for the Project and (2) minimizes impacts on the natural and human environment by utilizing an existing transportation corridor where practicable and incorporating mitigation measures. The actions by the Authority, and the laws under which such actions were taken, are described in the Record of Decision (ROD) and Final EIS on the Project, approved on September 3, 2021. The ROD, Final EIS, and other documents are available online in PDF at the Authority's website (*www.hsr.ca.gov*) and on CD–ROM by calling (916) 324–1541.

The notice applies to the ROD, Final EIS, and all other Federal agency decisions with respect to the Project as of the issuance date of this notice and

[1] The California HSR System would be implemented in two phases. Phase 1 would connect San Francisco to Los Angeles and Anaheim via the Pacheco Pass and the southern Central Valley. Phase 2 would extend the HSR system from the Central Valley (starting at the Merced Station) to the state's capital in Sacramento and from Los Angeles to San Diego.

all laws under which such actions were taken, including but not limited to:

1. NEPA;
2. Council on Environmental Quality regulations (1978); [2]
3. Fixing America's Surface Transportation Act (FAST Act);
4. Department of Transportation Act of 1966, Section 4(f);
5. Land and Water Conservation Fund (LWCF) Act of 1965, Section 6(f);
6. Clean Air Act Amendments of 1990;
7. Clean Water Act of 1977 and 1987;
8. Endangered Species Act of 1973;
9. Migratory Bird Treaty Act;
10. National Historic Preservation Act of 1966, as amended;
11. Executive Order 11990, Protection of Wetlands;
12. Executive Order 11988, Floodplain Management;
13. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations;
14. Executive Order 13112, Invasive Species.

Issued in Washington, DC.

Jamie P. Rennert,

Director, Office of Infrastructure Investment.

[FR Doc. 2021–19914 Filed 9–14–21; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2021–0104]

Agency Request for Approval of a New Information Collection(s): Disadvantaged Business Enterprise (DBE) Program Requirements

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT or Department) invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for an information collection for the Department's Disadvantaged Business Enterprise (DBE) program. The information collected is necessary to maintain successful implementation of the DBE program, as it helps ensure that state and local recipients of DOT funds carry out the program's mission of providing a level playing field for small businesses owned and controlled by socially and economically disadvantaged individuals. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995 (PRA).

DATES: Written comments should be submitted by October 15, 2021.

ADDRESSES: You may submit comments [identified by Docket No. DOT–OST–2021–0104] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marc D. Pentino, (202)366–6968, *marc.pentino@dot.gov* or Aarathi Haig, *aarathi.haig@dot.gov*/Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: To assist in estimating the potential paperwork burden of these collections, the Department reached out to a small number of stakeholders to gain a general understanding of how much time they spend each year responding to these collections. However, the stakeholder responses varied so significantly that we are concerned the responses blur lines between what aspects of the program are specifically information collections versus more general requirements of the program. To help commenters provide information that will better allow the Department to include the appropriate paperwork burden within this collection, we offer the following clarifications. A ''collection of information'' is defined as ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons.'' 5 CFR 1320.3(c)(1). The activities that constitute the ''burden'' associated with a collection are defined in 5 CFR 1320.3(b)(1) 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.'' Importantly, this burden is not necessarily the same as the entire regulatory burden for a program or an aspect of a program. For example, if a regulation requires an inspection and the completion of a form documenting the inspection, the full regulatory burden would likely include both actions, while the paperwork burden would only include the time and other resources needed to complete the form.

In addition, the Department believes certain recordkeeping requirements have not been adequately accounted for in the current collection. As stated in 5 CFR 1320(m), ''Recordkeeping requirement means a requirement imposed by or for an agency on persons to maintain specified records, including a requirement to: (1) Retain such records; (2) Notify third parties, the Federal government, or the public of the existence of such records; (3) Disclose such records to third parties, the Federal government, or the public; or (4) Report to third parties, the Federal government, or the public regarding such records.'' Thus, recordkeeping requirements can attach to records that are not necessarily covered by the PRA itself if, as in the DBE program, a requirement exists to maintain a complete case file. In that case, as the case file itself is not standardized, it would not be considered an information collection and the burden associated with developing the file would not be a paperwork burden. However, the requirement to keep that case file and, upon request, submit it to the Department, would be part of the paperwork burden.

For purposes of this 30-day notice, we have included the burden estimates we received from the small number of stakeholders we contacted as well as from the seven comments we received from the 60-day notice published in the **Federal Register** on June 15, 2021. As noted above, the Department is concerned that at least several of these estimates contain burdens associated with aspects of the program that are not paperwork burdens. To the extent feasible, the Department requests that commenters who provide burden estimates for aspects of the program identified below be as specific as possible, including what amount of time each task takes and what, if any, additional costs beyond labor costs (*e.g.,* copying, mailing, storage, or other technology costs) are associated with each aspect of the collection.

[2] The Council on Environmental Quality (CEQ) issued new regulations on July 14, 2020, effective September 14, 2020, updating the NEPA implementing procedures at 40 CFR parts 1500 through 1508. However, this project initiated NEPA before the effective date and relies on the CEQ regulations as they existed prior to September 14, 2020. All subsequent citations to the CEQ regulations in the ROD and Final EIS refer to the 1978 regulations, consistent with 40 CFR 1506.13 (2020) and the preamble at 85 FR 43340.

OMB Control Number: N/A.
Title: Disadvantaged Business Enterprise (DBE) Program Requirements.
Form Numbers: N/A.
Type of Review: Initial Approval of Existing Information Collection.

1. Maintain Bidders Lists

Section 26.11 and Appendix B of the DBE regulation require recipients to maintain a bidders list. The purpose of the list is to provide recipients the most accurate data possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on federally-assisted contracts. Recipients use the bidders lists to more accurately determine the availability of DBE and non-DBE firms and to measure the relative availability of ready, willing, and able DBEs when setting their overall goals under § 26.45. The data on a bidders list includes each firm's name, address, DBE status, age, and approximate annual gross receipts.

The annual burden hours we received from six stakeholder responses ranged from 3–915 hours. The total estimated annual cost burden we received from four stakeholder responses ranged from $360–$35,000. Although the Department acknowledges the wide range of recipients that must comply with this requirement, it seems unlikely that a fulltime employee dedicates half of his or her time each year to this task, as these lists are only updated three times per year for each recipient. Thus, the Department believes that the total annual burden per recipient is likely towards the lower end of the estimates we received.

Respondents: State and local recipients of DOT funds.
Number of Respondents: 1,198 (592 Federal Aviation Administration (FAA) recipients, 53 Federal Highway Administration (FHWA) recipients, 553 Federal Transit Administration (FTA) recipients).
Frequency: 3 times per year, although recipients have significant flexibility under § 26.11 to determine how often they update their bidders lists.
Number of Responses: 3,594.
Total Annual Burden: 636 hours and $30,000.

2. Maintaining DBE Directories

Section 26.81(g) requires recipients to maintain an electronic DBE directory. Section 26.31 mandates that each directory listing include the firm's address, phone number, and the types of work the firm has been certified to perform as a DBE, using the most specific North American Industry Classification System (NAICS) code available to describe each type of work. The primary purpose of the directory is to show the results of the certification process, *i.e.,* all firms that the recipient has certified. Prime contractors use the information to find potential DBE subcontractors.

The total annual burden hours we received from the five stakeholder responses ranged from 10–1,300 hours. The total annual cost burden we received from four stakeholder responses ranged from $240–$79,800. As with the above, the Department is concerned that the high estimate includes burden beyond the paperwork requirement of updating and maintaining the directory, though the Department believes the lower value of 10 hours may be insufficient for our larger stakeholders.

The General Contractors Association of New York (GCANY) commented that a requirement for recipients to include a detailed business description of each DBE in the directories would help prime contractors to conduct more targeted and meaningful outreach to DBEs. GCANY did not give examples of what additional details should be included beyond those that recipients already provide. The trade association American Road & Transportation Builders (ARTBA) commented that DBE directories in their current form should be improved, but did not provide specific suggestions.

Respondents: State and local recipients of DOT funds that perform DBE certification.
Number of Respondents: 132.
Frequency: Monthly, *i.e.,* 12 times each year.
Number of Responses: 1,584.
Total Annual Burden: 4,500 hours and $426,000.

3. Monitoring the Performance of DBE Program Participants

Section 26.37 requires recipients to implement monitoring mechanisms to ensure that all DBE program participants comply with the regulation's requirements. There are two required mechanisms: (1) Written certification that recipients have reviewed contracting records and monitored work sites in their state for this purpose, and (2) a running tally of actual DBE attainments. If a DOT Operating Administration (OA) conducts a compliance review or investigation, it checks to see if the recipient has the written certifications and tallies; recipients do not otherwise submit the information. Recipients collect the information so they can confirm at project sites that the DBE to whom the work was committed is in fact performing the work.

The total estimated annual burden hours we received from the six stakeholder responses ranged from 45–2000 hours. The total annual cost burden was calculated based on the average of four stakeholder responses ranging from $10,000–$80,000. The Department believes that it is likely that the stakeholders who provided the higher numbers were basing their response on the substantive monitoring requirement rather than the paperwork specific requirements.

In response to the Department's 60-day **Federal Register** notice, the Associated General Contractors of Texas (AGCT) commented that there is much fluctuation in the amount of time it takes to report DBE payments, with a range of 36–2,500 annual hours to gather and report the necessary data. AGCT attributes the difficulties involved to flaws in the Texas DOT's DBE management software.

Respondents: State and local recipients of DOT funds.
Number of Respondents: 1,198 (592 FAA recipients, 53 FHWA recipients, 553 FTA recipients).
Frequency: 36 times each year (3 times per month).
Number of Responses: 43,128.
Total Annual Burden: 28,224 hours and $42,250.

4. Addressing Overconcentration of DBEs in Certain Types of Work

Section 26.33 contemplates a situation in which DBEs in a certain work type are so prevalent that they unduly burden the ability of non-DBE firms to participate in those work types. If a recipient determines that overconcentration of DBEs exists in certain types of work, the recipient must submit to the appropriate OA the reasons for the determination and the measures devised to address it. The recipient must review and analyze actual data concerning an overconcentration allegation to determine if it supports a finding of overconcentration. The OA have never received submittals of overconcentration determinations from recipients. ARTBA commented that overconcentration of DBEs in the trucking industry is well known and that better data is needed to inform the Department, recipients, and others to develop new DBE firms within industries where they are needed. ARTBA did not specify what type(s) of data might be helpful; thus, the Department cannot estimate what the burden impact would be of collecting additional data.

Respondents: State and local recipients of DOT funds.

Number of Respondents: 1,198 (592 FAA recipients, 53 FHWA recipients, 553 FTA recipients).
Frequency: Zero.
Number of Responses: Zero.
Total Annual Burden: Zero.

5. Setting Overall Goals for DBE Participation in DOT-Assisted Contracts

Congress carefully considered and concluded that race-neutral means alone insufficient to remedy the effects of discrimination in DOT-assisted contracting. Thus, § 26.45 mandates that, in three-year intervals, recipients set and submit to DOT an overall goal for DBE participation in DOT-assisted contracts based on the availability of DBE firms compared to all firms in each recipient's DOT-assisted contracting market. Recipients must include with their overall goal submission a description of the methodology they used to establish the goal and a projection of the portions of the overall goal that they expect to meet through race-neutral and race-conscious means.

The total annual burden hours below were calculated based on the average of six stakeholder responses ranging from 16–500 hours. The total annual cost burden was calculated based on the average of four stakeholder responses ranging from $2,300–$50,000. The Department notes that the paperwork-specific burden does not apply to all the work that goes into the goal setting process, but rather only to those aspects of that work that is related to the submission of goals.

Respondents: State and local recipients of DOT funds.
Number of Respondents: 1,198 (592 FAA recipients, 53 FHWA recipients, 553 FTA recipients).
Frequency: Triennially.
Number of Responses: 1,198.
Total Annual Burden: 47 hours and $5,400.

6. Analyzing Discrepancies Between Uniform Report Data and Recipients' Overall Goals

Section 26.47(c) mandates that if the awards and commitments shown on a recipient's Uniform Report at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the recipient must, in order to be regarded by the Department as implementing the DBE program in good faith, (1) analyze in detail the reasons for the difference between the overall goal and awards and commitments in that fiscal year, and (2) establish specific steps and milestones to correct the problems the recipient identified in the analysis and to enable the recipient to meet fully the goal for the new fiscal year. If the recipient is a state highway agency, one of the 50 largest transit authorities as determined by the FTA, or an Operational Evolution Partnership Plan airport or other airport designated by the FAA, the recipient must submit, within 90 days of the end of the fiscal year, an analysis and corrective action plan to the appropriate OA for approval. A transit authority or airport not meeting the criteria of § 26.47(c)(3)(i) must retain analysis and corrective actions in its records for three years and make it available to the FTA or FAA on request.

The total annual burden hours we received from seven stakeholder responses ranged from 3–2,000 hours. The total annual cost burden was calculated based on the average of five stakeholder responses ranging from $450–$80,000. The Department is concerned that the higher numbers account for aspects of the program beyond the narrow collection in this requirement.

Respondents: State and local recipients of DOT funds.
Number of Respondents: 450.
Frequency: Annually or triennially depending on which OA provided the funds.
Number of Responses: 450.
Total Annual Burden: 650 hours and $36,650 per respondent.

7. Requiring Transit Vehicle Manufacturers (TVMs) To Comply With the DBE Regulation's Goal Setting Requirements

Under § 26.49, FTA funding recipients must require that each TVM, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the regulation's goal setting requirements. TVMs must establish and submit for the FTA's approval an annual overall percentage goal that is narrowly tailored and specific to its market area. The FTA reviews the goal setting methodologies to ensure that they are developed pursuant to regulatory requirements and the Department's official guidance. In addition to submitting an annual percentage goal, FTA recipients must submit, within 30 days of making an award, the name of the successful bidder and the total dollar value of the contract in the manner prescribed in the grant agreement. Once collected, the FTA analyzes the information for oversight purposes. For example, when the FTA conducts triennial and DBE-specific reviews, FTA contractors check the TVM Award Report data to make sure that the information on file with the recipients is accurately reflected on the report.

The total annual burden hours for FTA recipients were calculated based on the average of three stakeholder responses ranging from 1–40 hours. The total annual cost burden for FTA recipients was calculated based on the average of two stakeholder responses ranging from $60–$4,000. The total annual burden hours and cost for TVMs is the response from one stakeholder. The Department believes that these responses are, generally, consistent with its understanding of the paperwork burden associated with this requirement.

Respondents: FTA recipients and TVMs.
Number of Respondents: 391 (328 FTA recipients; 63 TVMs).
Frequency: FTA recipients each submit contract award information once each time they award a contract to a TVM, *i.e.,* cumulatively 1,255 times each year. The 63 TVMs each annually submit one overall percentage goal to the FTA, *i.e.,* cumulative total of 63 annual submissions.
Number of Responses: 1,255 (1,192 FTA recipient responses and 63 TVM responses).
Total Annual Burden: 12,020 hours and $18,880 (11,920 hours and $17,880 for FTA recipients to submit contract award information; 100 hours and $1,000 for each TVM to submit one overall percentage goal submission).

8. Projecting Which Portions of Overall Goals of DBE Participation Will Be Met Through Race-Neutral Means and Which Portions Will Be Met Through Race-Conscious Means

Section 26.51(c) states that each time a recipient submits an overall goal for review by the concerned OA, the recipient must also submit a projection of the portion of the goal that the recipient expects to meet through race neutral means and the basis for that projection. The projection is subject to approval by the concerned OA in conjunction with its review of the recipient's overall goal. Recipients use the information to determine what combination of race conscious and race neutral efforts they should undertake to meet their overall goal.

The total annual burden hours we received from six stakeholder responses ranged from 3–1,387 hours. The total annual cost burden from four stakeholder responses ranged from $360–$100,000. The Department believes that the higher totals include programmatic burdens beyond this specific collection.

Respondents: State and local recipients of DOT funds.

Number of Respondents: 1,198 (592 FAA recipients, 53 FHWA recipients, 553 FTA recipients).

Frequency: Triennially.

Number of Responses: 1,198.

Total Annual Burden: 171,713 hours and $9,000.

9. Documenting and Submitting Evidence of Having Made ''Good Faith Efforts'' To Secure DBE Participation in DOT-Assisted Contracts

Section 26.53(b)(2) and Appendix A state that in solicitations for DOT-assisted contracts for which a contract goal has been established, a recipient must require all bidders or offerors to submit the names and addresses of the DBE firms that will participate in the contract, a description of the work that each DBE will perform, the dollar amount of the participation of each DBE firm participating, written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal, and written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment. If the contract goal is not met, the recipient must require all bidders or offerors to submit evidence of their ''good faith efforts'' to achieve DBE participation on the contract. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE.

The total annual burden hours below were calculated based on the average of five recipient responses ranging from 2–192 hours. The total annual cost burden was calculated based on the average of four stakeholder responses ranging from $250–$7,300.

The Department acknowledges that the requirement of submitting ''good faith efforts'' documentation imposes a paperwork burden on prime contractors as well. It has not been feasible for the Department to survey prime contractors to calculate their burden. We request that prime contractors comment on this collection and provide hour and cost burden estimates that are as specific as possible, especially what amount of time it takes to prepare and submit ''good faith efforts'' documentation and any additional costs beyond labor costs (*e.g.,* copying, mailing, storage, or other technology costs). In response to the Department's 60-day notice, GCANY commented that some of its members have reported spending approximately $10,000–$15,000 per year on newspaper advertisements that did not result in DBE interest or participation. GCANY also responded that on average it takes four days for one full-time employee to call 300 DBEs, explaining that one person can call 15–20 DBEs in one hour, it takes 15 hours to contact 300 DBEs for the first round of calls, and then an additional 10 hours for the second round of calls. Prime contractor Milestone Contractors LP commented that its annual average burdens for documenting and submitting evidence of having made good faith efforts is 168 hours and $17,000. Contractor Jonathan Nolting shared that good faith efforts documentation takes approximately 1–2 days of multiple employees compiling, editing, reviewing, and submitting the required information. ARTBA commented that that its average annual burden related to good faith efforts is 168 hours and $17,000, based bidding on 24 contracts per year.

Respondents: State and local recipients of DOT funds and prime contractors.

Number of Respondents: 1,198 (592 FAA recipients, 53 FHWA recipients, 553 FTA recipients).

Frequency: 72 times each year (6 times per month) for state and local recipients of DOT funds.

Number of Responses: 86,256 (state and local recipients of DOT funds).

Total Annual Burden: 4,680 hours and $359,400 for state and local recipients of DOT funds; approximately 96.5 hours and $15,000 for prime contractors (based on the comments described above).

10. Drafting Unified Certification Program (UCP) Agreements

The DBE program regulation requires all recipients and sponsors implementing DBE and Airport Concession DBE (ACDBE) programs to establish a UCP in their respective jurisdictions. In January 2020, DOCR evaluated the UCP agreements of the 50 states, the District of Columbia, the Northern Mariana Islands, and Puerto Rico. DOCR found that over 20 UCP agreements have errors, have not been updated to reflect changes to the DBE regulation made in 2011 and 2014, and contain significant changes that might not have been approved by the Department.

One of the Department's concerns is that the UCP agreements and procedures are posted online and included in employee training materials, but contain information that misleads certified and applicant firms, as well as the recipients that created the agreements. For instance, some agreements contain outdated standards (*e.g.,* listing $750,000 instead of the current $1.32 million personal net worth limit), and/or inaccurate procedures (*e.g.,* reference to nonexistent regulatory requirements, such as DBE certification expiration, and impermissibly requiring interstate certification applicants to participate in telephone interviews).

The total annual burden hours for UCPs to update their program agreements were calculated based on two stakeholder responses ranging from 2–192 hours. The total annual cost burden was calculated based on the response of one stakeholder.

Respondents: Unified Certification Programs.

Number of Respondents: 53.

Frequency: The Department proposes that this occur every four years. The Department or OAs may, as part of compliance activities, recommend or request the recipient and sponsor to make changes more frequently if necessary.

Number of Responses: 53.

Total Annual Burden: 50 hours and $3,700 per respondent.

11. Evaluating the DBE Certification Eligibility of Applicant Firms

Recipients must take various steps in determining an applicant's eligibility, such as performing an on-site visit to the firm's principal place of business. Recipients often write a report documenting the visit and maintain a copy of it. They send a copy to the Department if a firm found ineligible files an appeal.

The total annual burden hours below were calculated based on the average of three stakeholder responses ranging from 240–2000 hours. The total annual cost burden was calculated based on one stakeholder response of $80,000.

Respondents: Recipients that perform DBE certification.

Number of Respondents: 132.

Frequency: 40 per respondent.

Number of Responses: 5,280.

Total Annual Burden: 44,000 hours and $3.2 million.

12. Maintaining Copies of Written Denial Letters Sent to Applicant Firms and Sending Copies to DOT Upon Request

Under § 26.86(a), when a recipient denies a certification application of a firm that is not currently certified by the UCP of which the recipient is a member, the recipient must provide the firm a written denial letter explaining the reasons for the decision, specifically referencing the evidence in the record that supports each reason for the denial. The recipient must maintain a copy of

the denial letter. If the denied firm appeals to DOT, the recipient must send a copy of the letter to DOT. If the firm requests the documents and other information on which the denial was based, the recipient must provide them.

The total annual burden hours below were calculated based on the average of three recipient responses within a narrow range. The total annual cost burden was calculated based on one stakeholder response of $7,000. This is an instance in which the Department believes that recipients included hours and costs beyond those attributable to the paperwork burden. As denial letters are not standardized, they are not considered an information collection and the burden associated with writing them is not a paperwork burden. The only paperwork burdens are for recipients to send electronic copies of the letters to firms and to the Department, and maintain a copy of the letters. Given the relative simplicity of those tasks, it seems unlikely that they require 3,360 hours and $210,000.

Respondents: Recipients that perform DBE certification.

Number of Respondents: 132.

Frequency: 2.5 each month.

Number of Responses: 3,960 per year.

Total Annual Burden: 3,360 hours and $210,000.

13. Removing the Eligibility of a DBE Firm

Section 26.87 describes the process for a recipient to remove a firm's certification. If a recipient determines there is reasonable cause to believe that a certified firm is no longer eligible for DBE certification, the recipient must give the firm a written notice of its intent to decertify the firm. The notice must clearly describe the reasons for the proposed determination and the reasons for it, with specific references to the evidence in the record on which each reason is based. The recipient must offer the firm, in writing, an opportunity for an informal hearing at which the firm may respond to the reasons for the proposal to remove its eligibility. The recipient must maintain a verbatim record/transcript of the hearing. If a recipient reaches a final decision to decertify the firm, the recipient must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of the final decision and explain the process for filing an appeal with the Department. If the firm appeals to the Department, the recipient must provide the Department with a copy of the transcript, and on request, to the firm.

The information collected during the decertification process is used in multiple ways. The decisionmaker appointed by the recipient uses the information in the notice of intent to decertify and any evidence presented during or after the hearing to make a final decision on whether the firm should be decertified. The firm uses the information in the notice of intent to decertify to determine what evidence or arguments it might want to submit at the informal hearing. The firm uses the information in the final decision, in part, to decide whether it wishes to file an appeal with the Department. If the firm files an appeal, the Department uses the information to determine whether substantial evidence supports the recipient's decision to remove the firm's certification eligibility.

The total annual burden hours are based on the average of three stakeholder responses ranging from 60–180 hours. The total annual cost is based on one stakeholder response of $4,100.

Respondents: Unified Certification Programs.

Number of Respondents: 38.

Frequency: 53 each year.

Number of Responses: 2,014.

Total Annual Burden: 6,095 hours and $217,300.

14. Mailing and Maintaining Copies of Summary Suspension Notices

Under § 26.88 when a recipient summarily suspends a firm's DBE certification, the recipient must immediately notify the firm of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the firm. If the owner(s) responds to the notice with information demonstrating that the firm remains eligible, the recipient must respond in writing (within 30 days of receiving the information) and explain how it intends to proceed.

The total annual burden hours below were calculated based on the average of three stakeholder responses ranging from 12–180 hours. The total annual cost burden was calculated based on one response from one stakeholder of $7,600. This is another instance in which the Department believes that recipients included hours and costs beyond those attributable to the paperwork burden. Given that, the hours and cost estimates the Department received are likely too high. Summary suspension notices are not standardized and thus not considered an information collection. The burden associated with writing them is not a paperwork burden. The only paperwork burdens are for recipients to send the notices by certified mail to firms and maintain an electronic copy.

Respondents: Recipients that perform DBE certification.

Number of Respondents: 132.

Frequency: 5 times each year.

Number of Responses: 660.

Total Annual Burden: 420 hours and $38,000.

15. Sending the Department a Full Administrative Record When the Department Gives Notice That a Denied or Decertified Firm Appeals to the Department and Maintaining a Copy of the Record

Under § 26.89(d), recipients must comply with the Department's request to timely (within 20 days of the request) provide a full administrative record when the Department gives notice that a denied or decertified firm has filed an appeal with the Department.

The total annual burden hours below were calculated based on the average of three stakeholder responses ranging from 2–200 hours. The total annual cost burden was calculated based on one response from one stakeholder response of $7,600.

Respondents: Recipients that perform DBE certification that have denied or decertified firms that appeal to the Department.

Number of Respondents: 50.

Frequency: 3 times each year.

Number of Responses: 150.

Total Annual Burden: 12,600 hours and $7,600.

16. Providing a Copy of Application Materials to an Additional State in Which a Firm Certified in Another State Applies to Another State for Certification (Interstate Certification)

Under § 26.85(c), when a firm currently certified in its home state (state A) applies to another state (state B) for DBE certification, state B is permitted to require the firm to submit a complete copy of all the materials the firm submitted to its home state/state A for initial certification. State B reviews the information to determine whether there is ''good cause'' (a term specifically described in the interstate certification rule) to believe that state A's certification is not erroneous or should not apply in its state. The interstate certification rule describes the limited circumstances under which state B could validly make such a determination.

Respondents: DBE firms applying for interstate certification.

Number of Respondents: 68.

Frequency: Once.

Number of Responses: 68.

Total Annual Burden: 20 hours and $2,000.

17. Writing and Submitting Narratives of Social and Economic Disadvantage When Applying for DBE Certification Based on an Individualized Showing of Disadvantage

The DBE program is intended to be as inclusive as possible while still remaining narrowly tailored. Individuals who are not members of groups whose members are presumed socially and economically disadvantaged may still qualify for DBE certification. Appendix E of the regulation states that to demonstrate their eligibility, these individuals must submit a narrative describing the individual's experiences of social disadvantage and a separate narrative in which the individual describes why the individual is economically disadvantaged. This information collection is critical for ensuring that only fully qualified firms receive DBE certification.

Respondents: DBE certification applicants whose owners are not presumed socially and economically disadvantaged under the DBE regulation.

Number of Respondents: 264.

Frequency: Once.

Number of Responses: 264.

Total Annual Burden: 90 hours and $8,000.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC on September 8, 2021.

Irene B. Marion,

Director, Departmental Office of Civil Rights, U.S. Department of Transportation.

[FR Doc. 2021–19940 Filed 9–14–21; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2021–0105]

Agency Request for Renewal of a Previously Approved Information Collection(s): Disadvantaged Business Enterprise (DBE) Program Collections

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew information collections associated with DOT's Disadvantaged Business Enterprise (DBE) and Airport Concessions DBE (ACDBE) program. These collections are: Uniform Report of DBE Awards or Commitments and Payments, the Uniform Certification Application (UCA), Annual Affidavit of No Change, DOT Personal Net Worth Form, and Reporting Requirements for Percentages of DBEs in Various Categories.

DATES: Written comments should be submitted by October 15, 2021.

ADDRESSES: You may submit comments [identified by Docket No. DOT–OST–2021–0105] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marc Pentino, (202)366–6968, *marc.pentino@dot.gov,* or Aarathi Haig, *aarathi.haig@dot.gov*/Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC, 20590

SUPPLEMENTARY INFORMATION: All five collections were previously approved under one OMB Control Number to allow DOT to more efficiently administer the DBE program. The information to be collected is necessary because it helps to ensure that State and local recipients that let federally funded contracts carry out their mandated responsibility to provide a level playing field for small businesses owned and controlled by socially and economically disadvantaged individuals. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended (Pub. L. 104–13).

OMB Control Number: 2105–0510.

Title: Disadvantaged Business Enterprise Program Collections.

Form Numbers: Not applicable.

Type of Review: Renewal of an information collection.

Background: DOT's DBE program is mandated by statute, including Section 1101(b) of the Fixing America's Surface Transportation Act (FAST Act) (Pub. L. 114–94) and 49 U.S.C. 47113. The Department's final regulations implementing these statutes are 49 CFR parts 23 and 26. The program is implemented by recipients of DOT financial assistance (State highway agencies, transit authorities, and airports).

The ''Uniform Report of DBE Awards or Commitments and Payments'' is necessary for the Department to be able to carry out its oversight responsibilities. It implements statutory reporting requirements and 49 CFR 26.11 and 26.47.

The ''Uniform Certification Application Form'' is required under 49 CFR 26.83(c)(2) and is necessary for determining whether a particular firm qualifies for DBE certification.

The ''Annual Affidavit of No Change'' is mandated under 49 CFR 26.83(j) and is necessary to ensure the integrity of the DBE program that requires DBEs annually state that they remain eligible for the program.

The ''Personal Net Worth Form'' is necessary to implement the requirement found in 49 CFR 26.67(a)(2) that a firm applying for DBE status must certify that the personal net worth of the disadvantaged owner(s) on whom the firm relies for certification eligibility does not exceed the current limit of $1.32 million.

The ''Percentages of DBEs in Various Categories'' collection is necessary to implement a long-standing statutory requirement calling on States to report annually, a list of small businesses certified as DBEs that are owned and controlled by socially and economically disadvantaged individuals, most recently included at section 1101(b)(4)(A) and (B) of the FAST Act. Submission of this information will also satisfy 49 CFR 26.11(e).

The information collections support one of DOT's strategic objectives of mission efficiency and support. The collection also helps ensure that State and local recipients that let federally funded contracts carry out their

mandated responsibility to ensure that only eligible small businesses owned and controlled by socially and economically disadvantaged individuals may compete for such contracts.

Uniform Report of DBE Awards/ Commitments and Payments

Respondents: State and local recipients of DOT funds.

Number of Respondents: 1,198 recipients.

Frequency: Once/twice a year.

Number of Responses: 1,198 (one per recipient).

Total Annual Burden: 315 hours and $61,000.

Uniform Certification Application Form

Respondents: Firms applying for initial DBE or ACDBE certification.

Number of Respondents: 9,500.

Frequency: Once during initial certification.

Number of Responses: 9,500 (one per respondent).

Total Annual Burden: 40 hours and $2,000.

Annual Affidavit of No Change

Respondents: Firms that have DBE or ACDBE certification.

Number of Respondents: 45,525 (41,800 DBEs and 3,725 ACDBEs).

Frequency: Once per year.

Number of Responses: 45,525 (one per respondent).

Total Annual Burden: 91,050 hours (2 hours/respondent * 45,525 respondents) and $4,552,500 ($100/respondent * 45,525 respondents).

Personal Net Worth Form

Respondents: Firms applying for DBE or ACDBE certification.

Number of Respondents: 9,500.

Frequency: Once.

Number of Responses: 9,500.

Total Annual Burden: 95,000 hours (10 hours/respondent * 9,500 respondents) and $28.5 million ($150/ hour x 10 hours/respondent = $1,500/ respondent; $1,500/respondent * 9,500 respondents = $14.25 million).

Percentage of DBEs in Various Categories

Respondents: States (through their Unified Certification Programs).

Number of Respondents: 53 (50 states, plus the District of Columbia, Puerto Rico, and the Northern Mariana Islands).

Frequency: Once per year.

Number of Responses: 53.

Total Annual Burden: 180 hours and $10,000.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC on September 8, 2021.

Irene B. Marion,

Director, Departmental Office of Civil Rights, U.S. Department of Transportation.

[FR Doc. 2021–19938 Filed 9–14–21; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Information Collection and Request for Public Comment

ACTION: Notice and request for comments.

SUMMARY: The U.S. Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the Community Development Financial Institutions (CDFI) Fund, a wholly owned government corporation within the Department of the Treasury, is soliciting comments concerning the CDFI Bond Guarantee Program's information collection. The CDFI Bond Guarantee Program proposes minor revisions to the existing approved forms and is seeking approval for a Tertiary Loan Monitoring (TLM) Report.

DATES: Written comments should be received on or before November 15, 2021 to be assured of consideration.

ADDRESSES: Direct all comments to Susan Suckfiel, CDFI Bond Guarantee Program Manager, at the Community Development Financial Institutions Fund, U.S. Department of the Treasury, at *bgp@cdfi.treas.gov.*

FOR FURTHER INFORMATION CONTACT: You may request a copy of the Tertiary Loan Monitoring Report and current information collection by emailing Susan Suckfiel, CDFI Bond Guarantee Program Manager, at *bgp@cdfi.treas.gov.* Requests for additional information should be directed to Susan Suckfiel, CDFI Bond Guarantee Program Manager, at the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, (202) 653–0421, option 5 (not a toll-free number), or by email to *bgp@cdfi.treas.gov.*

SUPPLEMENTARY INFORMATION: The information collection currently includes the following applications and reports: (1) Qualified Issuer Application (including, Appendix QI–2E), (2) Guarantee Application (including, Appendices A–2A, A–2C, and B–ID), (3) Secondary Loan Requirements Certification, (4) Financial Condition Monitoring (FCM) Report, (5) Pledged Loan Monitoring (PLM) Report, (6) Annual Assessment Report, and (7) Secondary Loan Commitment Form. Regarding the minor edits, for the Pledged Loan Monitoring Report, there is an additional field, column (14f) the 'Pledged Loan Date'; also, several unused fields were removed. For the Secondary Loan Commitment Form, the following additional rows were added to the signature line: Bond Identifier, Reviewing Official Name, and Approving Official Name. The Guarantee Application was updated to reflect a new year (2021) application round and new application deadlines. The minor revisions to the Guarantee Application are: the addition of a clarifying paragraph regarding applications which are deferred until a subsequent application round, updated AMIS charts and instructions, a reference to the new sample template to the Term Sheet, and the deletion of references to additional collateral requirements and third party support that are no longer applicable. Lastly, the Qualified Issuer application received the following minor updates: references to a new year (2021) application round, new application deadlines, and AMIS charts and instructions. The proposed Tertiary Loan Report will provide the CDFI Fund with information to monitor this type of collateral for the program that otherwise is not collected.

The total information collection: (1) Qualified Issuer Application, (2) Guarantee Application, (3) Secondary Loan Requirements Certification, (4) Financial Condition Monitoring Report, (5) Pledged Loan Monitoring Report, (6) Tertiary Loan Monitoring Report, (7) Annual Assessment Report, and (8)

Secondary Loan Commitment Form) will encompass OMB Control Number 1559–0044.

Title: CDFI Bond Guarantee Program Secondary Loan Commitment Form required by 12 CFR part 1808.101(d)(1)(2).

OMB Number: 1559–0044.

Abstract: The purpose of the Community Development Financial Institutions (CDFI) Bond Guarantee Program (BG Program) is to support CDFI lending by providing Guarantees for Bonds issued by Qualified Issuers as part of a Bond Issue for Eligible Community or Economic Development Purposes. The BG Program provides CDFIs with a source of long-term capital and further the mission of the CDFI Fund to increase economic opportunity and promote community development investments for underserved populations and distressed communities in the United States. The CDFI Fund achieves its mission by promoting access to capital and local economic growth by investing in, supporting, and training Community Development Financial Institutions (CDFIs).

In compliance with OMB Circular A–129, the CDFI Bond Guarantee Program will collect all necessary information to manage the portfolio effectively and track progress towards policy goals and statutory and regulatory requirements. The reporting forms are necessary for the Department of the Treasury's review and impact analysis on the current and proposed use of Bond Proceeds in underserved communities and to support the CDFI Fund in proactively managing regulatory compliance. Risk detection and mitigation are crucial activities for the long-term operation and viability of the CDFI Bond Guarantee Program. The Department of the Treasury's authority to collect this information and the specified data collection area and parameters are consistent with the requirements contained in 12 CFR part 1808.101(d)(1)(2) of the CDFI Bond Guarantee Program Interim Rule.

Current Actions: New Collection (Tertiary Loan Monitoring Report).

Type of Review: Regular Review.

Affected Public: Approved Eligible CDFIs and Qualified Issuers (QI).

Estimated Number of Eligible CDFI and QI Respondents: 15.

Estimated Annual Time per Eligible CDFI and QI Respondent: 1.66 hours.

Estimated Total Annual Burden Hours: 300 hours.

Current Actions: Renewal (Qualified Issuer and Guarantee Applications, Secondary Loan Requirements Certification, FCM, PLM, and Annual Assessment Reports, and Secondary Loan Commitment Form).

Type of Review: Regular Review.

Affected Public: Approved Eligible CDFIs and Qualified Issuers (QI).

Estimated Number of Eligible CDFI and QI Respondents: 40.

Estimated Annual Time per Eligible CDFI and QI Respondent: 100.694 hours.

Estimated Total Annual Burden Hours: 9,630 hours.

Requests for Comments

Copies of the forms can be found at CDFI Bond Guarantee Program | Community Development Financial Institutions Fund (*cdfifund.gov*). Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record and may be published on the CDFI Fund website at *http://www.cdfifund.gov.* Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the CDFI Fund, including whether the information shall have practical utility; (b) the accuracy of the CDFI Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The CDFI Fund specifically requests comments concerning the following questions: (1) Is there any input that the general public would like to share regarding our current information collection?

(2) Does the proposed TLM Report provide clarity on the expectations for meeting the requirements contained in 12 CFR part 1808.101(d)(1)(2)?

(3) Is there additional information or guidance that the CDFI Fund can provide to clarify the commitment test review process?

(4) Does the proposed TLM report contain the appropriate data points to ensure that it verifies the amount of collateralization pledged against the secondary loans for approved CDFIs that use the CDFI-to-financing entity asset class?

Authority: 12 CFR part 1808.

Jodie L. Harris,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2021–19865 Filed 9–14–21; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Title: Community Development Advisory Board Notice of Open Meeting.

Action: Notice of open meeting.

Executive Summary: This notice announces an open meeting of the Community Development Advisory Board (the Advisory Board), which provides advice to the Director of the Community Development Financial Institutions Fund (CDFI Fund). This meeting will be conducted virtually. A link to the livestream of the meeting will be posted at the top of *www.cdfifund.gov/cdab* the morning of the meeting.

Dates: The meeting will be held from 3:30 p.m. to 5:00 p.m. Eastern Time on Thursday, September 30, 2021.

Submission of Written Statements: Participation in the discussions at the meeting will be limited to Advisory Board members, Department of the Treasury staff, and certain invited guests. Anyone who would like to have the Advisory Board consider a written statement must submit it by 5:00 p.m. Eastern Time on Wednesday, September 22, 2021. Send electronic statements to *AdvisoryBoard@cdfi.treas.gov.*

In general, the CDFI Fund will make all statements available in their original format, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers, for virtual public inspection and copying. The CDFI Fund is open on official business days between the hours of 9:00 a.m. and 5:00 p.m. Eastern Time. You can make arrangements to virtually inspect statements by emailing *AdvisoryBoard@cdfi.treas.gov.* All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

For Further Information: Contact Bill Luecht, Senior Advisor, Office of Legislative and External Affairs, CDFI Fund; (202) 653–0322 (this is not a toll free number); or *AdvisoryBoard@cdfi.treas.gov.* Other information regarding the CDFI Fund and its

programs may be obtained through the CDFI Fund's website at *www.cdfifund.gov.*

Supplementary Information: Section 104(d) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325), which created the CDFI Fund, established the Advisory Board. The charter for the Advisory Board has been filed in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and with the approval of the Secretary of the Treasury.

The function of the Advisory Board is to advise the Director of the CDFI Fund (who has been delegated the authority to administer the CDFI Fund) on the policies regarding the activities of the CDFI Fund. The Advisory Board does not advise the CDFI Fund on approving or declining any particular application for monetary or non-monetary awards.

In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 and the regulations thereunder, Bill Luecht, Designated Federal Officer of the Advisory Board, has ordered publication of this notice that the Advisory Board will convene an open meeting, which will be conducted virtually, from 3:30 p.m. to 5:00 p.m. Eastern Time on Thursday, September 30, 2021. Members of the public who wish to view the meeting can access the link to the livestream of the meeting at the top of *www.cdfifund.gov/cdab.*

The Advisory Board meeting will include remarks by Treasury officials, the swearing-in of new members, a report from the CDFI Fund Director on the activities of the CDFI Fund since the last Advisory Board meeting, and a discussion of future priorities.

Authority: 12 U.S.C. 4703.

Jodie L. Harris,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2021–19866 Filed 9–14–21; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning the foreign account tax compliance act registration.

DATES: Written comments should be received on or before November 15, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Foreign Account Tax Compliance Act (FATCA) registration.

OMB Number: 1545–2246.

Form Numbers: 8966, 8957, 8966–C, 8809–I, and 8508–I.

Abstract: The IRS developed these forms under the authority of IRC section 1471(b), which was added by Public Law 111–47, section 501(a). Section 1471 is part of the Foreign Account Tax Compliance Act (FATCA) legislative framework to obtain reporting from foreign financial institutions on the accounts held in their institutions by U.S. persons. Form 8957, Foreign Account Tax Compliance Act (FATCA) Registration information is to be used by a foreign financial institution to apply for status as a foreign financial institution as defined in IRC 1471(b)(2).

The information from Form 8966, FATCA Report, is to be used by a responsible officer of a foreign institution to apply for a foreign account tax compliance Act individual identification number as defined in IRC 1471(b)(2). Form 8966–C is used to authenticate the Form 8966, U.S. Income Tax Return for Estates and Trusts, and to ensure the ability to identify discrepancies between the number of forms received versus those claimed to have been sent by the filer. Taxpayers use Form 8508–I to request a waiver from filing Form 8966 electronically. Form 8809–I is used to request an initial or additional extension of time for file 8966 for the current year.

Current Actions: There is no change in the form or paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Form 8957

Estimated Number of Respondents: 30,620.

Estimated Time per Response: 8 hours, 7 minutes.

Estimated Total Annual Burden Hours: 249,247.

Form 8966

Estimated Number of Respondents: 5,429,560.

Estimated Time per Response: 25 minutes.

Estimated Total Annual Burden Hours: 2,280,415.

Form 8966–C

Estimated Number of Respondents: 1,000.

Estimated Time per Response: 7 minutes.

Estimated Total Annual Burden Hours: 120.

Form 8508–I

Estimated Number of Respondents: 100.

Estimated Time per Response: 4 hrs., 17 minutes.

Estimated Total Annual Burden Hours: 429.

Form 8809–I

Estimated Number of Respondents: 5,000.

Estimated Time per Response: 3 hrs., 22 minutes.

Estimated Total Annual Burden Hours: 16,800.

Totals for this collection (all five forms).

Estimated Number of Respondents: 5,466,280.

Estimated Total Annual Burden Hours: 2,547,011.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 9, 2021.

ChaKinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2021–19881 Filed 9–14–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Form 8932

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 8932, Credit for Employer Differential Wage Payments.

DATES: Written comments should be received on or before November 15, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Credit for Employer Differential Wage Payments.

OMB Number: 1545–2126.

Form Number: Form 8932.

Abstract: Employers use Form 8932 to claim the credit for eligible differential wage payments made to qualified employees during the tax year. The credit is 20% of the first $20,000 of differential wage payments paid to each qualified employee.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 21,100.

Estimated Time per Respondent: 2 hours, 58 minutes.

Estimated Total Annual Burden Hours: 62,456.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 7, 2021.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2021–19892 Filed 9–14–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Form 8850

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity Credit.

DATES: Written comments should be received on or before November 15, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Pre-Screening Notice and Certification Request for the Work Opportunity Credit.

OMB Number: 1545–1500.

Form Number: Form 8850.

Abstract: Employers use Form 8850 as part of a written request to a state employment security agency to certify an employee as a member of a targeted group for purposes of qualifying for the

work opportunity credit. The work opportunity credit covers certain employees who begin work for the employer after December 31, 2020.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 440,000.

Estimated Time per Respondent: 7 hours, 24 minutes.

Estimated Total Annual Burden Hours: 3,242,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 25, 2021.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2021–19895 Filed 9–14–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Form 56 and Form 56–F

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 56, Notice Concerning Fiduciary Relationship, and Form 56–F, Notice Concerning Fiduciary Relationship of Financial Institution.

DATES: Written comments should be received on or before November 15, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Notice Concerning Fiduciary Relationship and Notice Concerning Fiduciary Relationship of Financial Institution.

OMB Number: 1545–0013.

Form Number: 56 and 56–F.

Abstract: Form 56 is used to notify the IRS of the creation or termination of a fiduciary relationship under Internal Revenue Code (IRC) section 6903 and provide the qualification for the fiduciary relationship under IRC section 6036. Form 56–F is used by the federal agency acting as a fiduciary in order to notify the IRS of the creation, termination, or change in status of a fiduciary relationship with a financial institution.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Responses: 174,050.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 349,786.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 7, 2021.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2021–19891 Filed 9–14–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Form W–2G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form W–2G, Certain Gambling Winnings.

DATES: Written comments should be received on or before November 15, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Certain Gambling Winnings.

OMB Number: 1545–0238.

Form Number: Form W–2G.

Abstract: Internal Revenue Code sections 6041, 3402(q), and 3406 require payers of certain gambling winnings to withhold tax and to report the winnings to the IRS. The IRS uses the information to verify compliance with the reporting rules and to verify that the winnings are properly reported on the recipient's tax return.

Current Actions: There are changes to the existing collection: The estimated number of responses was updated.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Responses: 13,894,700.

Estimated Time per Respondent: 24 minutes.

Estimated Total Annual Burden Hours: 5,696,827.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 31, 2021.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2021–19894 Filed 9–14–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Information Collection Tool Relating to Casualties and Thefts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning casualties and thefts.

DATES: Written comments should be received on or before November 15, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Casualties and Thefts.

OMB Number: 1545–0177.

Form Number: 4684.

Abstract: Form 4684 is used by taxpayers to compute their gain or loss from casualties or thefts, and to summarize such gains and losses. The data is used to verify that the correct gain or loss has been computed.

Current Actions: There is no change in the form or paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 213,867.

Estimated Time per Response: 6 hours, 3 min.

Estimated Total Annual Burden Hours: 1,293,895.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All

comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 2, 2021.

ChaKinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2021–19879 Filed 9–14–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Information Collection Tool Relating to the Orphan Drug Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning the orphan drug credit.

DATES: Written comments should be received on or before November 15, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Orphan Drug Credit.

OMB Number: 1545–1505.

Form Number: 8820.

Abstract: Filers use this form to elect to claim the orphan drug credit, which is 50% of the qualified clinical testing expenses paid or incurred with respect to low or unprofitable drugs for rare diseases and conditions, as designated under section 526 of the Federal Food, Drug, and Cosmetic Act.

Current Actions: There is no change in the form or paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 67.

Estimated Time per Response: 4 hours, 42 min.

Estimated Total Annual Burden Hours: 316.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 2, 2021.

ChaKinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2021–19880 Filed 9–14–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0587]

Agency Information Collection Activity: VAAR Clause 852.211–70, Equipment Operation and Maintenance Manuals

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Office of Acquisition and Logistics (OAL), 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 November 15, 2021.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Bogdan Vaga, Office of Acquisition & Logistics, Procurement Policy & Warrant Management Services (003A2A), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Bogdan.Vaga@va.gov.* Please refer to ''OMB Control No. 2900–0587'' 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. 2900–0587'' 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, OAL invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OAL's functions,

including whether the information will have practical utility; (2) the accuracy of OAL's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.211–70, Equipment Operation and Maintenance Manuals.

OMB Control Number: 2900–0587.

Type of Review: Extension of a currently approved collection.

Abstract: The information collection requirements from VAAR clause 852.211–70, Equipment Operation and Maintenance Manuals, is used when VA purchases technical medical equipment and devices or mechanical equipment. The clause requires the contractor to furnish both operator's manuals and maintenance/repair manuals with the equipment provided to the Government. This clause sets forth those requirements and sets forth the minimum standards those manuals must meet to be acceptable. Generally, this is the same operator's manual furnished with each piece of equipment sold to the general public and the same repair manual used by company technicians in repairing the company's equipment. The cost of the manuals is included in the contract price or listed as separately priced line items on the purchase order. The operator's manual will be used by the individual actually operating the equipment to ensure proper operation and cleaning. The repair manual will be used by VA equipment repair staff to repair the equipment.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 621 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,725.

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. 2021–19822 Filed 9–14–21; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Advisory Committee on the Readjustment of Veterans will hold three virtual meetings. The meetings will begin and end as follows:

Date:	Time:	Open session:
October 18, 2021.	7:30 a.m. to 5:00 p.m. EST.	Yes.
October 19, 2021.	7:30 a.m. to 5:00 p.m. EST.	Yes.
October 20, 2021.	7:30 a.m. to 12:00 p.m. EST.	Yes.

The meeting sessions are open to public.

The purpose of the Committee is to advise the Department of Veterans Affairs (VA) regarding the provision by VA of benefits and services to assist Veterans in the readjustment to civilian life. In carrying out this duty, the Committee shall take into account the needs of Veterans who served in combat theaters of operation. The Committee assembles, reviews, and assesses information relating to the needs of Veterans readjusting to civilian life and the effectiveness of VA services in assisting Veterans in that readjustment.

The Committee, comprised of 13 subject matter experts, advises the Secretary, through the VA Readjustment Counseling Service, on the provision by VA of benefits and services to assist Veterans in the readjustment to civilian life. In carrying out this duty, the Committee assembles, reviews, and assesses information relating to the needs of Veterans readjusting to civilian life and the effectiveness of VA services in assisting Veterans in that readjustment, specifically taking into account the needs of Veterans who served in combat theaters of operation.

For public members wishing to join the meeting, please use the following Webex link: *https://veteransaffairs.webex.com/webappng/sites/veteransaffairs/meeting/download/d83ece0e56744b8ba40bbfa197756d6a?siteurl=veteransaffairs&MTID=mec58f4a2bdcbe7b8ac65c9b1e4f72597*.

No time will be allotted for receiving oral comments from the public; however, the committee will accept written comments from interested parties on issues outlined in the meeting agenda or other issues regarding the readjustment of Veterans. Parties should contact Mr. Richard Barbato via email at *VHA10RCSAction@va.gov,* or Department of Veterans Affairs, Readjustment Counseling Service (10RCS), 810 Vermont Avenue, Washington, DC 20420. Any member of the public seeking additional information should contact Mr. Barbato at the phone number or email addressed noted above.

Dated: September 10, 2021.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2021–19848 Filed 9–14–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0843]

Agency Information Collection Activity Under OMB Review: VHA Homeless Programs—Project CHALENG (Community Homelessness Assessment, Local Education and Networking Groups) for Veterans

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0843''.

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. 2900–0843'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: VHA Homeless Programs—Project CHALENG (Community Homelessness Assessment, Local Education and Networking Groups) for Veterans, VA Forms 10–10161 and 10–10162.

OMB Control Number: 2900–0843.

Type of Review: Revision of a currently approved collection.

Abstract: The Department of Veterans Affairs (VA) launched Project CHALENG (Community Homelessness Assessment, Local Education and Networking Groups) for Veterans in 1993 in response to Public Law 102–405, which required VA to make an assessment of the needs of homeless Veterans in coordination with other Federal departments, state and local government agencies, and nongovernmental agencies with experience working with homeless persons. Since 1993, VA has administered a needs assessment in accordance with guidance in Public Law 103–446 and Public Law 105–114. Legal authority for this data collection is found under 38 U.S.C., Part I, Chapter 5, Section 527 that authorizes the collection of data that will allow measurement and evaluation of the Department of Veterans Affairs Programs, the goal of which is improved health care for Veterans.

This collection of information is necessary to ensure that VA and community partners are developing services that are responsive to the needs of local homeless Veterans, in order to end homelessness and prevent new Veterans from experiencing homelessness. Over the years, data from CHALENG has assisted VA in developing new services for Veterans, such as the Homeless Veteran Dental Program (HVDP), the expansion of the Department of Housing and Urban Development-VA Supportive Housing (HUD–VASH) Program, the Veterans Justice Programs and Supportive Services for Veteran Families (SSVF). In addition, community organizations use CHALENG data in grant applications to support services for homeless Veterans. These grant applications are for VA and other Federal, local government, and community foundation dollars, which maximize community participation in serving homeless Veterans.

This collection will be an update of a collection approved in 2018. Revisions to the collection were made based on input provided by VA staff members to reduce the number of questions in the surveys. The collection consists of two forms/surveys: One for Veterans (VA Form 10–10161) and one for VA staff members, community homeless providers, and interested community members (VA Form 10–10162). The only difference between the two forms/surveys are the introductory demographic questions; the survey is the same for both groups.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR 125 on July 02, 2021, pages 35380 and 35381.

Affected Public: Individuals or Households.

Estimated Annual Burden: Total = 480 hours.

Veteran Survey (VA Form 10–10161): 300 hours.

Provider Survey (VA Form 10–10162): 180 hours.

Estimated Average Burden per Respondent:

Veteran Survey: 6 minutes.

Provider Survey: 6 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 4,800 total.

Veteran Survey: 3,000.

Provider Survey: 1,800.

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. 2021–19930 Filed 9–14–21; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Commerce

Office of the Under-Secretary for Economic Affairs

15 CFR Part 1500

Concrete Masonry Products Research, Education, and Promotion Order; Final Rule

DEPARTMENT OF COMMERCE

Office of the Under-Secretary for Economic Affairs

15 CFR Part 1500

[Docket No.: 210820–0165]

RIN 0605–AA53

Concrete Masonry Products Research, Education, and Promotion Order

AGENCY: Under-Secretary for Economic Affairs, United States Department of Commerce.

ACTION: Final rule; notification of referendum.

SUMMARY: This final rule sets forth the proposed Concrete Masonry Products Research, Education, and Promotion Order, as authorized by the Concrete Masonry Products Research, Education, and Promotion Act of 2018, which establishes a Concrete Masonry Products Board (Board) composed of industry members appointed by the Secretary of Commerce (Secretary) to develop and implement programs of research, education, and promotion in the concrete masonry products industry. This final rule: Defines the purpose of the program; provides for a national Board, outlining its basic structure and defining its responsibilities; establishes an assessment and provides for its collection; outlines program funding and its limits to program activities; establishes recordkeeping requirements; sets out the Department's authority to review and approve program activities; outlines the Department's enforcement authority; and sets up a referendum to determine whether the Department will rescind this Order.

DATES:

Effective date: November 29, 2021. If the referendum fails, the Department will publish a document in the **Federal Register** to withdraw this final rule before the effective date.

Referendum dates: Registration to participate in the referendum began following the publication of the final rule on referendum procedures (86 FR 23271, May 3, 2021). The referendum period will conclude after thirty days or once all registrants have voted, whichever occurs first. The referendum begins October 15, 2021. *See* **SUPPLEMENTARY INFORMATION** for more information and details regarding referendum. The Department must receive ballots no later than midnight of the final day of the referendum period on November 15, 2021.

ADDRESSES: Voters may submit ballots via mail to United States Department of Commerce Checkoff Team, 4600 Silver Hill Road, Washington, DC 20233, or facsimile (301) 278–9099.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Thompson, Communications for the Commerce Checkoff Implementation Program, Office of the Under Secretary for Economic Affairs, telephone: (202) 482–0671 or via electronic mail: *michael.thompson1@trade.gov.*

SUPPLEMENTARY INFORMATION: The Concrete Masonry Products Research, Education, and Promotion Act of 2018 authorizes the Concrete Masonry Products Research, Education, and Promotion Order (the Order). This document affects *15 CFR part* 1500, subpart A. The purpose of the Order is to strengthen the position of the concrete masonry products industry in the domestic marketplace; maintain, develop, and expand markets and uses of concrete masonry products in the domestic marketplace; and promote the use of concrete masonry products in construction and building. This Order sets forth the process to establish a Concrete Masonry Products Board (the Board) composed of industry members appointed by the Secretary of Commerce (the Secretary) to develop and implement programs of research, education, and promotion in the concrete masonry products industry. The funding of the Board's activities and programs is through assessments paid by manufacturers of concrete masonry units. The initial assessment is $.01 per concrete masonry unit sold. The Secretary will hold a referendum among eligible manufacturers to determine whether they favor the implementation of the Order. For the Order to go into effect, there must be a majority ''yes'' vote by both: (1) The total number of concrete masonry unit manufacturers voting, and (2) manufacturers who operate a majority of the machine cavities operated by the manufacturers voting in the referendum. Manufacturers must register prior to midnight of the day prior to the start of the referendum period in order to vote.

The Department published the referendum procedures separately in the **Federal Register** (86 FR 23271, May 3, 2021), codified at 15 CFR part 1500, subpart B. This final rule also announces that the U.S. Department of Commerce is conducting the referendum among eligible manufacturers of concrete masonry units to determine whether they favor implementation of the program. The referendum period will conclude after thirty days or once all registrants have voted, whichever occurs first. Whether this Order will go into effect is dependent upon the outcome of the referendum. To be eligible to vote, concrete masonry unit manufacturers must have manufactured concrete masonry units within the last 180 days prior to the start of the referendum period. The Department will mail ballots to all registered concrete masonry unit manufacturers.

Pursuant to the Concrete Masonry Products Research, Education, and Promotion Act of 2018, 15 U.S.C. 8701 *et seq.* (the Act), the Department of Commerce (the Department) is enacting a research, education, and promotion program (commonly referred to as a checkoff program) for concrete masonry products. The Act also authorizes the Secretary to ''issue such regulations as may be necessary to carry out [the Act] and the power vested in the Secretary under [the Act].'' (*See* 15 U.S.C. 8701, 8713). This document is the final version of the Order and will be the subject of a referendum. If the manufacturers of concrete masonry units, via the referendum, approve the Order, the Secretary will appoint a Board to carry out the duties as the Order prescribes, including the collection of the assessment. Under the Order, the Secretary would establish a Board that reflects a fair, equitable, and diverse representation of the concrete masonry products industry, reflecting the geographical distribution of the manufacture of concrete masonry products in the United States, the types of concrete masonry products manufactured, and the range in size of manufacturers in the United States. An industrywide assessment of $.01 per concrete masonry unit sold would finance the research, education, and promotion initiatives of the checkoff program. The Secretary would oversee the operations and actions of the Board.

As part of this rulemaking process, the Department published (1) a proposed Order (85 FR 52059, August 24, 2020), and (2) proposed referendum procedures (85 FR 65288 October 15, 2020). Both rules provided for a comment period that has now expired. The Department received comments on the proposed Order from 146 commenters. The comments and the Department's responses are set forth in this final rule.

I. Industry Background

While the concrete masonry product industry is of moderate size, its manufacturers populate every State in the nation as well as the District of Columbia. The nature of the industry and cost of transportation of the products is such that the customer base

for concrete masonry products is very localized. Relatively small producers dominate the industry. Because they produce a commodity that is not easily differentiated by manufacturer, most of the producers acting alone do not have the resources to efficiently market the value of the product or conduct the research and education to promote market growth. Coordinated activity would enable producers to leverage economies of scale in conducting research, education, and promotion of the industry.

The Order applies to products manufactured on concrete block machines and used for construction. The Act and the Order distinguish between *concrete masonry products* and *concrete masonry units. Concrete masonry units* are a type of concrete masonry product with an actual width of 3 inches or greater that are manufactured from dry-cast concrete using a block machine, including concrete block and related concrete units used in masonry applications. According to industry experts, the vast majority of these units are the hollow, loadbearing concrete blocks often referred to as ''gray block.'' [1] In contrast, *concrete masonry products* is a broader category that, in addition to concrete masonry units, includes hardscape products, such as concrete pavers and segmental retaining wall units, manufactured on a block machine using dry-cast concrete.

Concrete masonry products range from the paver that is of original design and very ornate to the homogenous, non-descript 8-inch x 8-inch x 16-inch concrete block. The initial rate of assessment will apply only to concrete masonry units.

To identify the affected industry, the Department used statistics for the North American Industry Classification System (NAICS) code 327331, concrete block and brick manufacturing. This industry includes the manufacturers of concrete architectural block, concrete and cinder blocks, concrete bricks, concrete patio block, concrete paving block, precast terrazzo plinth blocks, precast concrete block and brick, prestressed concrete blocks or bricks, and slumped brick.[2] The Department believes this NAICS classification most closely corresponds to manufacturers of the broader category of *concrete masonry products*.

Table 1: North American Industry Classification for Cement and Concrete Product Manufacturing

Code	Title
32731	Cement manufacturing
32732	Ready-mix concrete manufacturing
32733	Concrete pipe, brick, and block manufacturing
327331	**Concrete block and brick manufacturing**
327332	Concrete pipe manufacturing
32739	Other concrete product manufacturing

According to estimates from the 2017 Economic Census of the U.S. Census Bureau, the block and brick manufacturing industry had nearly 700 establishments and more than 16,000 employees in 2017. From 2007 to 2017, the number of establishments, number of employees, annual payroll, value added, and value of shipments declined in the industry.[3] There were 690 block and brick manufacturing establishments in 2017, down from 914 in 2007. The number of employees fell by 7,578 to 16,247 in 2017, and annual payroll fell $152 million to $841 million. Value added and total value of shipments also fell during this time period, down $715 million to $2.86 billion and down $1.36 billion to $4.88 billion, respectively.

[1] National Concrete Masonry Association (NCMA), *2019 CMU Sales Report* (Herndon, VA: NCMA, 2019); *https://ncma.org/updates/news/2019-cmu-sales-survey-released/*.

[2] Executive Office of the President, Office of Management and Budget, *North American Industry Classification System: United States, 2017* (Suitland, MD: Census Bureau, 2017); *https://www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf*.

[3] The Economic Census, conducted every 5 years by the U.S. Census Bureau, is the official measure of the nation's businesses and economy.

Table 2: Block and Brick Manufacturers, Economic Census

Year	Number of establishments	Number of employees	Annual payroll ($mils)	Value added ($mils)	Total value of shipments ($mils)
2002	910	20,037	762	2,279	4,112
2007	914	23,825	993	3,578	6,243
2012	822	15,006	663	2,215	3,991
2017	690	16,247	841	2,863	4,882

Source: U.S. Census Bureau Economic Census

The following is a non-exhaustive list of examples of products that would fall within the definition of a concrete masonry unit (defined in § 1500.6):

(A) Concrete Block, including:
- (1) Gray
- (2) Architectural
- (3) Prefaced
- (4) Those joined by any method in masonry construction:
- (i) Bed joint mortar or adhesives
- (ii) Dry-stacked and joined by filling cores solid with grout or joined by other means
- (iii) Post tensioned
- (iv) Surfaced bonded
- (5) Sound wall block
- (6) Fence block
- (7) Lintel Block—while lintels designed to span an entire opening are excluded, those concrete masonry units joined to create a lintel are included
- (8) Chimney, Pilaster, or Column Block
- (9) Screen Block—these architectural units are included if their widths are greater than 3 inches if they are made on a block machine
- (10) Concrete Sill Block—these units and related specialty units are included if their widths are greater than 3 inches if they are made on a block machine
- (11) Concrete Block formed with concrete masonry face shells and other materials to create a masonry unit used in masonry construction

(B) Concrete Brick (Architectural only)

(C) Concrete Masonry Veneer Units (greater than 3 inches in width)

Summary of Final Rule

Under the Order, the Secretary will establish a Board that ensures fair, equitable, and diverse representation of the concrete masonry products industry, reflecting the geographical distribution of the manufacture of concrete masonry products in the United States, the types of concrete masonry products manufactured, and the range in size of manufacturers in the United States. An industrywide assessment would finance the research, education, and promotion initiatives of the checkoff program. The Secretary would oversee the operations and actions of the Board.

The Order addresses, among other items, establishment and membership of the Board, guidance for appointments, a nomination process, the selection of alternates, Board terms, powers and duties of the Board, programs and projects to carry out the purpose of the Act, budgets, expenses, contracts and agreements, books and records, and reporting requirements.

The Order provides the rate of assessment and that such assessments shall be paid by a manufacturer that has manufactured concrete masonry products during a period of at least 180 days prior to the date they are to pay the assessment. The initial rate of assessment is $.01 per concrete masonry unit sold. Such manufacturers will submit their assessments to the Board quarterly. The Order allows for a change in rate if a two-thirds majority of voting members of the Board so vote. An increase or decrease can occur only once per year and the change in rate may not exceed $.01 per concrete masonry unit sold. Finally, the assessment rate shall not be in excess of $.05 per concrete masonry unit.

The Order provides that not less than 50 percent of assessments (less administration expenses) paid by a manufacturer shall be used to support research, education, and promotion programs and projects in support of the Geographic Region of the contributing manufacturer. The Order defines five Geographic Regions that generally reflect the northeast, southeast, middle, southwest, and northwest (plus Hawaii and Alaska) of the United States. The Board will work with regional concrete industry groups to allocate funding and coordinate programs that have national and regional impact.

Programs for research, promotion and education will further the following goals:
- Strengthen the position of the domestic concrete masonry products industry.
- Maintain, develop, and expand markets and uses for concrete masonry products domestically.
- Promote the use of concrete masonry products in construction and building.

The Act mandates that the Department conduct a referendum among eligible manufacturers of concrete masonry products to determine whether the manufacturers favor implementation of the concrete checkoff program prior to it going into effect. Each manufacturer eligible to vote in the referendum is entitled to one vote. The Department will use Employer Identification Numbers to identify unique manufacturers. For the order to go into effect, there must be a majority ''yes'' vote by both: (1) The total number

of concrete masonry unit manufacturers voting; and (2) manufacturers who operate a majority of the machine cavities operated by the manufacturers voting in the referendum. For more details on the referendum see the referendum procedures notice published separately the **Federal Register** (86 FR 23271, May 3, 2021.

To participate in the referendum manufacturers must to register by midnight of the day prior to the start of the referendum period.

Although the Department specifically requested comments on its intended use of the Employer Identification Numbers (EIN) as an identifier of unique manufacturers, none were received. Therefore, the Department will proceed with its plan to use EIN to identify unique manufacturers eligible to vote in the referendum.

Final Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA), first enacted in 1980 and codified at 5 U.S.C. 600–611, is intended to place the burden on the government to review all new regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization can have a bearing on its ability to comply with Federal regulations. Major goals of the RFA are: (1) To increase agency awareness and understanding of the impact of their regulations on small business; (2) to require that agencies communicate and explain their findings to the public; and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities.

The RFA emphasizes predicting significant adverse impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts, while still achieving the stated objective of the action. When an agency publishes a proposed regulatory action, it must either: (1) Certify that the action will not have a significant adverse impact on a substantial number of small entities, and support such a certification declaration with a factual basis, demonstrating this outcome, or, (2) if such a certification cannot be supported by a factual basis, prepare and make available for public review an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact of the proposed rule on small entities.

The Department issued an IRFA and requested public comments. Those comments and the Department's responses are found in the ''Public Comments'' section of this final rule. The FRFA includes updates to the RFA the Department references in the responses to the IRFA public comments.

Basis and Purpose of the Rule

This action is taken under the authority of the Act, which authorizes a research, education, and promotion program for concrete masonry products, also known as a checkoff program. The Secretary will establish this checkoff program by issuance of an order issued that is subject to approval by an industry referendum. If industry approves of the order, the program would then be carried out by a Board, which would develop research and education programs as well as efforts to promote concrete masonry products in domestic markets. Board activities would be funded by assessments on manufacturers of concrete masonry products, based on the number of concrete masonry units sold each quarter. The specific burdens for applying for Board membership and the ongoing evaluation and compliance program are detailed later in this document in the section titled ''Paperwork Reduction Act''.

A Description of and an Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why No Such Estimate Is Available

The final Order applies to products manufactured on concrete block machines and used for construction. As indicated by the data below and confirmed by industry experts, the industry is dominated by small entities.

The U.S. Small Business Administration size standard to qualify as a small business in this industry is 500 or fewer employees.[4] According to Census data, there were 430 firms and 686 establishments engaged in concrete block and brick manufacturing in 2017.[5] Of these, 401 firms, or 93 percent, employed fewer than 500 employees, and these small firms accounted for 514 establishments, or 75 percent of all establishments, and about 62 percent of industry employment.[6] Note that a single company or business can have multiple firms, and a single firm can have multiple establishments.

[4] *See* ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes'' on the U.S. Small Business Administration website. For the economic analysis, the Department used statistics for the North American Industry Classification System (NAICS) code 327331, concrete block and brick manufacturing.

[5] A firm is a business organization consisting of one or more domestic establishments in the same state and industry that were specified under common ownership or control and an establishment is a single physical location at which business is conducted or services or industrial operations are performed. See ''Statistics of U.S. Businesses Glossary'' on the U.S. Census Bureau website.

[6] *See* ''2017 SUSB Annual Data Tables by Establishment Industry'' on the U.S. Census Bureau website. For more information, see the County Business Patterns methodology on the Census website.

Table 3: Block and Brick Manufacturers 2017 by Business Size					
Size of business by number of employees	**Number of firms**	**Number of establishments**	**Employment**	**Estimated receipts ($mils)**	**Annual payroll ($mils)**
Total	**430**	**686**	**16,575**	**4,682**	**814**
0-4	92	92	173	56	9
5-9	66	66	432	97	19
10-19	83	87	1,168	277	56
20-99	116	152	3,851	922	185
100-499	44	117	4,607	1,506	251
500+	29	172	6,344	1,823	293
Source: U.S. Census Bureau 2017 County Business Patterns and 2017 Economic Census, Table US_6digitnaics_2017, released 03/06/2020					

Costs to Affected Entities

Assessment costs—Under this final Order, concrete masonry unit manufacturers would be required to pay assessments to the Board to fund the research, education, and promotion programs of the Board. Assessment rates are dictated by the Act, which specifies assessments of $0.01 per unit sold, up to a maximum of $0.05 per unit sold, with assessments increasing by no more than $0.01 per year.

To estimate the costs to businesses, the Department estimates a range of assessment revenues, with the lower bound calculated using assessments of $0.01 with no increases in future years and the upper bound calculated using the maximum assessment rates permitted under the Act—$0.01 in the first year, increasing by $0.01 in subsequent years to the maximum of $0.05 in the fifth year and thereafter.

To estimate the number of units sold by small entities, the Department relies on industry reports that show there were 1.15 billion concrete masonry units produced in 2018. Assuming small businesses produced 60 to 75 percent of overall production, we estimate that between 690 and 862.5 million units would be produced by small businesses in the first year of the program. Based on these estimates, total estimated assessments on small businesses based on $0.01 per unit produced would be $6.90 million to $8.63 million in the first year.

To estimate a lower bound on expected annual assessment costs, we assume assessments remain constant at $0.01 for 10 years and industry production grows with inflation. Therefore, total assessments on small businesses over the next 10 years is expected to be $6.90 million to $8.63 million per year. The midpoint of this range, $7.76 million, is the Department's lower bound estimate of annual costs to small businesses. This amounts to $19,358 per firm each year.

To estimate an upper bound estimate of costs, we assume the Board institutes the maximum assessment authorized under the Act, resulting in a $0.01 per unit assessment in year 1, $0.02 in year 2, $0.03 in year 3, $0.04 in year 4, and $0.05 in years 5 through 10. Again, assuming industry production grows with inflation, total assessments on small businesses over the next 10 years would be expected to average $27.60 million to $34.50 million per year. The midpoint of this range, $31.05 million, is the Department's upper bound estimate of annual costs to small businesses. This amounts to an average of $77,431 per firm each year.

Applying the Department's upper bound cost estimate to the receipts estimated by the Census Bureau for this industry, total costs on small businesses represent about 1.1 percent of small business receipts (shown in ''Table 3: Block and Brick Manufacturers 2017 by Business Size,'' employment size less than 500). Again, this would be the average over the 10-year period. Assessments would be lowest in year 1 and highest in years 5 through 10.

These estimated assessment costs are based on the limited information available for the concrete and brick manufacturers industry. For this analysis, the Department relies on industry estimates for annual unit production. Because unit production is not available by business size, we estimate a range of unit production using establishment data from the U.S. Census Bureau for NAICS industry 327331. Because the number of firms estimated by industry experts differs from the number of firms under NAICS industry 327331, we request comments regarding the number and size of entities covered under the proposed order, including whether production occurs among businesses not classified under NAICS industry 327331.

Reporting costs—In addition to assessments paid on concrete masonry units, there are reporting costs associated with adoption of this final Order. Under the proposed order, each manufacturer may be required to periodically provide to the Board such information as may be required by the Board, with the approval of the Secretary, which may include, but not be limited to, the following:

1. Number and type of concrete masonry units manufactured;
2. Number and type of concrete masonry units on which an assessment was paid;
3. Name and address of the manufacturer; and
4. Date assessment was paid on each concrete masonry unit sold.

We expect these reporting costs to be incurred with the quarterly assessments paid by manufacturers. We estimate that managers would spend 60 minutes per quarterly report. According to the Bureau of Labor Statistics, the median pay for industrial production managers is $50.71 per hour.[7] Thus, we estimate that firms will pay, on average, $202.84 for reporting costs per year.

Benefits for Affected Entities

While this final Order may result in a significant cost for a substantial number of small businesses, these costs are expected to result in benefits to businesses that are at least commensurate with these costs. The

[7] See the *Occupational Outlook Handbook,* Bureau of Labor Statistics (*https://www.bls.gov/ooh/*).

assessments pay for investments in product research, education, and promotion programs that are intended to yield direct benefits to concrete product manufacturers in the form of new markets and increased consumer demand.

Alternatives: Consideration of a De Minimis Exemption

The Department recognizes that some small businesses with minimal production in the industry may not have the resources to comply with the requirements imposed by the proposed order, and therefore, the Department may consider a *de minimis* exemption for these small businesses. A *de minimis* exemption would exclude from the order some small businesses with minimal production, based on measures of unit production, employment, receipts, machine cavities, or other relevant criteria. The Department requested comments on whether to include a de minimis exception. Those that commented on a de minimis exception were universally opposed to the inclusion of one. Comments in opposition included several manufacturers to which a de minimis exception would apply. The Department did not receive any comments supporting the inclusion of a *de minimis* exception. At this time the Department has decided to defer to industry preferences and will not include a de minimis exception in this Order. The Department reiterates this decision in its response to comments below. This Order complies with the statutory requirements of the Act; there are no other possible alternatives to this final rule.

A Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

To minimize the respondent burden, the Department plans to create simple forms for ease of applying for Board membership and submitting evaluation and compliance information. Further, the Department plans to allow interested parties to apply for Board membership and submit evaluation and compliance information via email, by mail, or facsimile—at the choice of the respondent. See **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** in this preamble.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Department submitted to OMB for approval the application form individuals will complete for consideration as a Board member and the evaluation and compliance form the Board will use to assist in receiving assessments. These forms represent the information collection and recordkeeping requirements to establish the Board and to document evaluation and compliance of the program. OMB approved both forms under OMB Control Number 0605–0028.

Title: Concrete Masonry Products Research, Education, and Promotion Order.

OMB Number: 0605–0028.

Expiration Date of Approval: October 31, 2023.

Type of Request: New information collection for research, education and promotion programs.

Abstract: The Department seeks to establish an orderly program for developing, financing, and carrying out an effective, continuous, and coordinated program of research, education and promotion, to support the concrete masonry products industry. The Department has published an Order (15 CFR part 1500, subpart A) in the **Federal Register** to establish the program. The purpose of the Order is to strengthen the position of the concrete masonry products industry in the domestic marketplace; maintain, develop, and expand markets and uses of concrete masonry products in the domestic marketplace; and promote the use of concrete masonry products in construction and building. The Order allows a Concrete Masonry Products Board (Board) made up of industry members appointed by the Secretary to develop and implement programs of research, education, and promotion. The funding of the Board's activities and programs will be through assessments paid by manufacturers of concrete masonry units. The initial assessment will be $.01 per concrete masonry unit sold.

The Secretary will hold a referendum among eligible manufacturers to determine whether they favor the implementation of the Order. The Order only will go into effect if the referendum results in the affirmative vote of a majority of those voting and also a majority of the block machine cavities in operation by those voting. The Secretary will then appoint members of a Board to carry out the duties prescribed in the order. Among its duties, the Board will establish an evaluation and compliance program to receive and validate assessments. After three years and five years, the Secretary will evaluate the appropriateness, effectiveness, impact of the program, and provide an accounting of assessments.

The first form of this ICR relates to the establishment of a Board. If the referendum is successful and approves the concrete masonry products order the Secretary will appoint members and establish a Board. Eligible concrete masonry product manufacturers will complete and submit an application for Board membership and will be invited to provide any additional information to support their application. The Board application form is voluntary.

The second form of this ICR relates to the evaluation and compliance program required if the referendum is successful and approves the concrete masonry products order. Eligible concrete masonry product manufacturers will complete and submit the evaluation and compliance form on a quarterly basis. Completion of the evaluation and compliance form is mandatory.

Aside from that noted above in the IRFA, there are no special skills required to complete the application for Board membership or the evaluation and compliance information.

The Authorizing Statute: 15 U.S.C. Chapter 13 (sections 8701–8717).

Board Application

Estimate of Burden: 1.0 hour per application.

Respondents: Manufacturers of concrete masonry units.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 50.

The Department will add the Board member application form to the other information collections approved under OMB No. 0605–0028.

Evaluation and Compliance

Estimate of Burden: 1 hour per quarter.

Respondents: Manufacturers of concrete masonry units.

Estimated Number of Respondents: 690.

Estimated Number of Responses per Respondent: 4 per year.

Estimated Total Annual Burden on Respondents: 2,760 hours.

The Department will add the Board member application form to the other information collections approved under OMB No. 0605–0028.

National Environmental Policy Act

This final rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or

Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

Public Comments and Department Responses

The Department published a proposed rule setting forth the draft order in the **Federal Register** on August 25, 2020 (85 FR 52059). The Department made available copies of the proposed rule through the Office of the Federal Register also via the internet at *www.regulations.gov*. That proposed rule provided for a 45-day comment period. The Department received comments from 146 commenters, including four commenters that submitted during the public comment period for the referendum procedures. This document sets forth the comments the Department received on the Order and the Department's responses. Where appropriate, similar comments were aggregated together. The comments are set forth according to the subject of the comment.

The Initial Regulatory Flexibility Act (IRFA) Report and the Department's Economic Analysis

The Department requested comments on the IRFA report. For ease of reading, this section addresses those comments that were specific to the IRFA and the Department's economic analysis of the industry. Some of the comments received on these subjects are later reinforced by the comments received regarding the Order. This may result in a perception of repetition; however, any such repetition simply will reinforce the Department's goal to address all comments received. The Department will refer back to this section where subject matter overlaps. With regards to IRFA and the economic analysis of the industry, the Department requested comments regarding:

1. Information about concrete masonry unit production, including:

a. Estimated annual production of concrete masonry units for the industry as a whole and by business size;

b. The number and size of entities covered under the proposed order, including whether production occurs among businesses not classified under NAICS industry 327331; and

c. An estimated sales price for concrete masonry units.

2. Whether to include a de minimis exemption and what criteria to use for an exemption; and

3. The approach used to estimate the impact of the proposed order on industry and small businesses and suggestions for alternative approaches.

Comment:

One commenter provided the following information on annual production numbers: ''The National Concrete Masonry Association (NCMA) conducts an annual sales survey of the industry. The latest survey was completed in 2019 and includes information on annual production for the calendar year 2018. Based on that survey, it is estimated that 1.15 billion concrete masonry units were produced in the United States in 2018.''

Response:

The Department referenced this NCMA information in its economic analysis of the industry.

Comment:

Additionally, the commenter provided NCMA ''estimates that there are 284 concrete masonry unit manufacturing companies which operate a combined 627 plant locations. (Reference: NCMA 2019 CMU Sales Survey). These companies operate an estimated 2000 machine cavities. . . . [The NCMA] estimates that the median number of machine cavities per concrete masonry unit manufacturing company in the U.S. is 3, and the average number of machine cavities per company is 6. While the smallest companies will have one machine at one location with 2 or 3 machine cavities, the largest companies have multiple plant locations in multiple regions of the country and more than 100 cavities.'' Based on this, the commenter recommends determining company size based on production capacity (preferred) or number of production locations. The commenter then provided proposed categories.

Response:

As mentioned previously, to ensure the fair, equitable, and diverse representation of the concrete masonry products industry, the composition of the Board will reflect the geographical distribution of the manufacture of concrete masonry products in the United States, the types of concrete masonry products manufactured, and the range in size of manufacturers in the United States. Since the Concrete Masonry Products Board should reflect the distribution of both size of company and types of products produced, the Department does not believe a reliance on concrete masonry unit manufacturing capacity is the correct focus. Further, the machines in operation can be dual purpose (*i.e.,* molds between concrete masonry units and non-concrete masonry units on the same machine can be interchangeable) and therefore a focus on concrete masonry unit capacity to determine company size could be problematic and not be an accurate reflection on company size.

As to using the number of production locations as a basis for Board membership, the Department does see this as a logical alternative but at this time the Department does not have the data needed to verify the number of production locations.

The Department considered these options along with number of employees as a measurement and has decided to use number of employees to determine company size. Using the number of employees as a measurement is consistent with practices of the U.S. Small Business Administration (SBA) and the County Business Patterns (CBP) data collected by the Bureau of the Census on behalf of the SBA. The SBA uses the number of employees to categorize company size. The survey of local businesses provides information on the number employees, better reflects the entire production of concrete masonry products, and is the most reliable information currently available. CBP is an annual series that provides subnational economic data by industry and has been in existence since 1946. Data reported are for activities occurring during the reference year. CBP has been published annually since 1964; similar data were reported for various periods since 1946. The Department believes this information is the best available to make an accurate count.

If the industry approves the Order, the Board will be able to conduct additional surveys that will help better characterize the industry. Until such time as the Department can obtain additional needed reliable data, the Department will use SBA and CBP data.

Therefore, the Department will define company size based on the number of employees. Companies identified as ''large'' will be those with over 500 employees; companies identified as ''medium'' will be those with between 100–499 employees; companies identified as small will be those with less than 100 employees. See the general comment section under the same heading for additional details on the Department's definition of company size categories.

Comment:

The Department received comments from seventeen commenters all opposed to having a de minimis exception. Two commenters did not endorse the use of a de minimis exception but suggested that the Department not use number of employees as the criteria if the Department decides to include a de minimis exception.

Response:

After careful consideration, not receiving any comments supporting the inclusion of a *de minimis* exception and recognizing the lack of complete knowledge of the industry composition, the Department has decided not to include a de minimis exception. The Department leaves open the possibility to include a *de minimis* exception after a period of time to allow some experience of the Order in operation and gain a better understanding of the affected industry. Until that possible re-consideration, there is no *de minimis* exception and all manufactures of concrete masonry units will be subject to the assessment should the Order go into effect. See the general comment section under the same heading for additional details on the Department's consideration of the *de minimis* exception.

Comment:

With regard to the economic analysis and the table [Table 3] presented, one commenter pointed out an apparent inaccuracy in the total employment number of 6,344 data.

Response:

The Department recognizes the table can cause confusion. The Department provided a footnote and hyperlink (from the Census Bureau (*https://www.census.gov/programs-surveys/susb/about/glossary.html*) that provides an additional explanation of the information in the table. The following reproduces the information associated with the hyperlink:

Enterprise: An enterprise (or ''company'') is a business organization consisting of one or more domestic establishments that were specified under common ownership or control. The enterprise and the establishment are the same for single-establishment firms. Each multi-establishment company forms one enterprise—the enterprise employment and annual payroll are summed from the associated establishments.

Enterprise Size: Enterprise size designations are determined by the summed employment of all associated establishments. Employer enterprises with zero employees are enterprises for which no associated establishments reported paid employees in the mid-March pay period but paid employees at some time during the year.

Firm: A firm is a business organization consisting of one or more domestic establishments in the same geographic area and industry that were specified under common ownership or control. The firm and the establishment are the same for single-establishment firms. For each multi-establishment firm, establishments in the same industry within a geographic area will be counted as one firm; the firm employment and annual payroll are summed from the associated establishments.

In reading the table remember one company can have multiple firms. Therefore, of the 430 firms noted in the table, 401 firms or 93 percent came from companies employing fewer than 500 employees. And these 401 firms accounted for 514 establishments, or 75 percent of all establishments, and about 62 percent of the employment across the industry. The Department has amended the IRFA to make the point clear that a company or business can be made up of multiple firms.

Paperwork Reduction Act

In the proposed rule, the Department invited comments on the information collection requirements (ICR) prescribed in the Paperwork Reduction Act section of this rule. Specifically, the Department solicited comments on: (a) Whether these ICRs are necessary for the proper performance of the functions of the Department, including whether the information has practical utility; (b) the accuracy of the Department's estimates of the burden of the ICRs; (c) the quality, utility, and clarity of the information to be collected; and (d) whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

Comment:

The Department received one comment regarding the information collection. The commenter concurred with the time and burden estimate for completing the individual forms. However, the commenter believed the Department overestimated the total annual burden of completing the evaluation and compliance form. The commenter suggested companies vice establishments for the form and believed the number of companies to be approximately 286.

Response:

The Department used 690 establishments in its estimates. Currently information on the number of manufacturers in this industry is not complete. Until such time as the Department has better information on companies, firms, and establishments within this industry and how the industry will respond to reporting requirements, the Department chooses to err on the side of overestimating and will use the number of establishments (690) in its annual burden estimate of the number of respondents.

Concrete Masonry Units and Concrete Masonry Products

Comment:

One commenter opined that the only product that should be listed in the definition of concrete masonry units is gray block.

Response:

The Department provided a list of the products it considers qualify as a concrete masonry unit. The list reflects those concrete masonry products that fall within the definition of concrete masonry unit—a concrete masonry product that is manmade masonry unit having an actual width of 3 inches or greater and manufactured from dry-cast using a block machine. Such term includes concrete block and related concrete units used in masonry applications—a more expansive category than only gray block. As there were no other comments in opposition, the Department will use this non-exhaustive list of examples to identify those products that qualify as a concrete masonry unit.

Comment:

One commenter pointed out that use of ''or'' vice ''and'' in the definition of ''masonry unit'' opens to assessments products not contemplated to be subject to assessment. The wording in the Act is ''. . . noncombustible building product laid by hand or joined using mortar, grout, surface bonding, post-tensioning or some combination of these methods.'' On the same subject, one commenter asked the Department to refine the definition of masonry unit or give notice to include concrete pavers and segmental retaining wall units as being subject to assessment.

Response:

The commenter attempts to show an apparent inconsistency within the Act. However, the Department reads this definition differently and finds the term ''or'' combines two thoughts, both of which require joining the concrete masonry units with a bonding agent. While both readings may be grammatically correct, the other definitions the Act provides supports the Department's reading of this definition.

In its definition of concrete masonry products, the Act refers to a broader class of products that would include concrete masonry units as well as hardscape products such as concrete pavers and segmental retaining wall units. In its definition of concrete masonry products, the Act makes clear that hardscape products (concrete pavers and segmental retaining wall units) are a concrete masonry product distinct from concrete masonry units. Further, the Act defines as unique terms ''concrete masonry unit'' and ''masonry unit.'' Concrete masonry unit is a subset of masonry units. The Act defines masonry unit as a noncombustible building product intended to be laid by hand or joined using mortar, grout, surface bonding, post-tensioning or some combination of these methods.

In its American Standard Building Code Requirements for Masonry the National Institute of Standards and Technology (NIST) certainly captures within its definition of masonry a ''bonding together.'' Naturally a masonry unit would contemplate a bonding together of units. The definitions provided by the Act also supports the conclusion that a masonry unit suggests a bonding together. Those products laid by hand without a bonding agent are the hardscape products that the definition of concrete masonry products distinguishes as outside of concrete masonry units.

Therefore, the Department finds that the word ''or'' combines the following two thoughts:

. . . building product intended to be laid by hand using mortar, grout, surface bonding, post tensions or some combination of these methods, *or*

. . . building product intended to be joined using mortar, grout, surface bonding, post tensions or some combination of these methods.

Although the wording and sentence structure is admittedly somewhat confusing, the interpretation above aligns with the other definitions, NIST standards for masonry which are accepted nation-wide and internationally, and the intent of the Act to assess concrete masonry units and not the broader class of products that includes pavers and segmental retaining walls. As stated previously, hardscape products such as pavers and segmental retaining wall units are not concrete masonry units and therefore are not subject to assessment under this order.

Comments in Full Support of the Proposed Order

Comment:

Thirty commenters communicated support of the proposed Order, without specifying particular attributes. Most spoke enthusiastically about the prospect of having funding available to conduct research, education, and promotion programs.

Comment:

53 commenters highlighted that the program will increase sales and job growth. Many commenters noted that the softwood lumber building industry has successfully implemented its own Checkoff program. The commenters viewed a Checkoff program as a vital initiative and one that will help them better compete in the building products market.

Comment:

45 commenters espoused the resiliency of concrete masonry units as a construction material, specifically calling attention to its resistance to extreme weather and wind conditions, its durability against natural disasters and earthquakes, fire safety features, and generally safer structures. Commenters believed if a checkoff program is implemented, a priority should be given to conducting an information campaign that highlights these attributes.

Comment:

28 commenters identified regional training and workforce development as priorities for future growth. The commenters envisioned a more robust training program at both the university level and trade schools. Commenters believed Many universities have dropped the building trades from their curriculum. Commenters had a stated desire to reverse this trend. One commenter felt the program could promote wider use of software programs and other tools in the engineering and construction design of structures.

Comment:

26 commenters supported engaging in a messaging campaign targeting designers, architects, engineers in an effort to impact local building codes in favor of concrete masonry as the building product of choice.

Comment:

Ten commenters voiced a desire to fund research to determine the true environmental impact of concrete masonry units, believing such research will show that over their life, concrete masonry units reduce the carbon emissions (especially when offset by carbon recovery) and have a low environmental impact as compared to other building materials. In addition, commenters believed there were manufacturing aspects to explore that will further reduce the carbon footprint of concrete masonry units.

Response:

The Department appreciates all public comments both in support or opposed to the Order and finds them all very constructive. The Department remains committed to its neutral position as to the ultimate outcome of the referendum. By publishing all comments, the Department continues its full support of the industry as a whole and the decision the industry ultimately chooses.

Comments Against or Reflecting a Desire for Changes

Regional and State-Based Checkoff Programs

Comment:

Fourteen commenters, primarily from concrete masonry unit producers in the State of Florida, supported a voluntary, State-based checkoff program in lieu of a national, mandatory program. Several commenters noted ''the State of Florida has had a voluntary program in operation for a number of years.'' Several reinforced the thought of one commenter that ''the State program has been effective in serving local concrete masonry units (CMU) initiatives and need'' and that ''Florida CMU companies view the Proposed Order as another ''TAX'' on Florida companies.'' Another commenter stated that ''manufacturers should not be compelled to participate or contribute to any program, let alone one that seems to have been conceived without full regard for the state and nature of their individual businesses or markets, or one that has not clear direction, strategy or philosophy.'' Another commenter succinctly provided that ''I now conclude that I don't think a national Check Off program is right for my industry. Instead, the program should be at the state level, which will be far more efficient and effective at addressing local and regional interests.'' In opposition to a voluntary program, another commenter observed that ''as we've seen over time that it is kind of the 80–20 rule. 80% of the companies watch as 20% of the companies consistently contribute. Our industry needs 100% participation''.

Response:

While nothing prevents the industry from creating a ''voluntary'' checkoff program, the Act does not authorize the Department to establish a ''voluntary'' checkoff program.

The Act authorizes the Department to establish a ''checkoff'' program under a National Board that will collect an established assessment. The ''checkoff'' program is for research, education, and promotion, including funds for marketing and market research activities, that promote the use of concrete masonry products in construction and building. Government checkoff programs facilitate cooperation within industries dominated by relatively small producers that produce a commodity that is not easily differentiated by manufacturer. Typically, manufacturers acting alone do not have the resources to efficiently market the value of the product or conduct the research and education to promote market growth. Government checkoff programs facilitate cooperation within an industry and allow for a comprehensive, industry-wide strategy to expand markets.

One purpose of a nationwide checkoff is to promote a commodity as a whole, instead of by individual businesses, meaning participants in the industry benefit from economies of scale in conducting research, education, and

promotion for the entire industry. The goal of a checkoff program is to enhance consumer awareness nationwide which may lead to increased sales and higher overall demand for masonry products.

Another purpose of Government involvement in checkoff is to enforce the remittance of assessments by the manufacturer to the Board. If the Order goes into effect, the payment of assessments will be mandatory. The Act and Order provide ''. . . that assessments shall be paid by a manufacturer if the manufacturer has manufactured concrete masonry products during a period of a least 180 days prior to the date of the assessment is to be remitted.'' 15 U.S.C. 8705(a).

However, the Order is not automatic but rather is subject to a vote among the affected industry. The Order will only go into effect if approved by a majority of manufacturers that participate in the referendum and if they also represent a majority of the machine cavities in operation.

Comment:

Three commenters suggested exempting Florida from the national program and twelve suggested making Florida its own region. Another commenter suggested including a sixth region by removing Florida from Region 2 and making it its own region. Two commenters suggested simply providing an opt-out option for segments of the industry or individual manufacturers.

Similarly, regarding region makeup, one commenter stated ''the Order does not explain how funds might be used to support smaller districts within a geographic region. For example, Region V includes Alaska, California, Colorado, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming. This region spans over 3,000 miles from east to west and over 2,000 miles north to south. It is naive to assert that the same programs and projects will support the varying needs of Hawaii, Alaska, California, and Idaho.'' Another commenter voiced a specific concern of ''the unique climate and geographic isolation of states'' such as Hawaii and Alaska. And another commenter voiced concern that ''while 50% of the money is to go back to the region it was collected, I feel it could be difficult to develop programs that would benefit the regions as a whole. Individual markets within the regions could be vastly different and therefore different programs could be needed for each individual market.''

Response:

With regard to designating the geographic regions, the Order uses the same language as is found in the Act and Florida is within Region 2. Anticipating the potential need to better reflect the industry needs or adapt to changes in manufacturing, the Act and the Order specifically provide a method for adjustment of geographic regions. While there is no provision to change the number of regions, upon a recommendation of the Board, the Secretary may modify the composition of the geographic regions described in the Act. So, in the future, the composition of the five geographic regions may change based on findings and recommendations of the Board. There is no restriction as to when the Board can do this. The Department has amended the Order to better reflect the freedom of the Board to recommend adjustments to the geographic regions established in the Act.

Although not required in the Act, the order then subdivides the five regions into 15 districts. Dividing the regions into districts will assist in adequately reflecting the geographic regional diversity of the Board and it will allow the Board to more easily manage the program, for example use of the district structure will assist in making sure allocation of funding is equally dispersed within a region, it will allow consideration of programs to be more specialized, it will better address the more localized, disparate, and unique characteristics found within a given region, and it will enable the Board to tailor programs to meet more localized needs. Additionally, the district structure is readily adaptable as the Board may at any time recommend adjustments to the number, composition, and structure within the regions.

As stated previously, if the industry votes the Order into effect, the payment of assessments will be mandatory. Allowing for an opt-out option would be counter-productive and defeat the purpose of the Act.

De Minimis Exception

Comment:

Seventeen commenters voiced opposition to the consideration of including a de minimis exception.

Response:

The Department recognizes that some small businesses with minimal production in the industry may not have the resources to comply with the requirements imposed by the proposed order, and therefore, the Department requested comments on whether the Department should consider a *de minimis* exception for these small businesses. A *de minimis* exception would exclude from the order some small businesses with minimal production, based on measures of unit production, employment, receipts, machine cavities, or other relevant criteria.

Of particular note, of those commenting on the potential exception, eleven stated they were a small business and believed it only fair to be included in assessments as they would also reap the benefits of research, education, and promotion programs the checkoff program puts into effect.

As previously stated in the section concerning FRFA, after careful consideration, not receiving any comments supporting the inclusion of a *de minimis* exception, the Department has decided not to include a *de minimis* exception. The Department leaves open the possibility to reconsider the application of a *de minimis* exception based on observations following the execution of the Order, the input of the Board, and lessons learned after implementation of the program. Until that re-consideration, there is no *de minimis* exception and all manufacturers of concrete masonry units will be subject to the assessment should the Order go into effect.

Company Size

Comment:

The Department requested comments on the proper determinant for company size. Two commenters suggested that production capacity or revenue would be a better method to determine if a company is categorized as small, medium or large. One commenter mentioned that recent trends of automation in concrete block manufacturing have resulted in the use of fewer employees while increasing manufacturing output. One commenter thought that considering manufacturing capacity rather than number of employees is a more practical measure of size.

Response:

The Act sets out the criteria to ensure diverse representation of the industry in selecting Board members. The Secretary will add these criteria into her plan for proper Board composition, the Department will follow this plan to help attain a diverse representation of members for the Board selection process. One criterion prescribed by the Act is that Board members reflect the ''range in size of manufacturers in the United States.''

As previously stated in the section concerning the IRFA, the Department used the company size information based on the SBA table of company size standards. Like the SBA, the Department used 500 as the employee number between small and large. To create a range in size, the Department

broke size down as small, medium, and large. To determine the number for each category the Department used Census data (2017 County Business Patterns and 2017 Economic Census). The Department used Table 3 to ascertain firm size and distinguish between those of ''medium (20–499 employees)'' and ''small (0–19 employees).'' Although SBA would define the latter two categories as small, the Department used Census categories and did not refine the size of business beyond that reflected in the Census provided data.

The numbers the Department used provide a satisfactory distribution between size of firms based on available Census data—resulting in approximately 35% of the firms that are small sized, approximately 40% of the firms that are medium-sized, and approximately 25% that are large-sized. The Department believes these percentages provide the needed balance and diversity of perspective for Board representation purposes.

If the requisite information becomes available, for instance through the evaluation and compliance process, to make a more refined distinction—whether based on production capacity or further refining company size—the Department will consider any such recommendation made by the Board.

Funding for Regional Initiatives

Comment:

Five commenters spoke on the subject of the assessments received by the Board. Commenters stated the proposed Order provides a return of 50% of assessments to each of the five regions. The allocation of the remaining 50% would be decided by the Concrete Masonry Products Board. Commenters voiced concern that ''the allocation of these Concrete Board held funds will not be fair and equitable and may benefit one or more regions at the expense of other regions.'' One commenter thought the disbursement of funds ''defective because there were no assurances that any funds from our market would work its way back to our state'' One commenter was worried the size and geographic distribution of its region would preclude it receiving funds stating ''[w}e would gladly support and vote for the check-off program if we were confident that at least some of the funds from this program would be used to bolster our individualized market.'' *One commenter stated the Order does not ''clarify how it proposes to ensure that assessment funds would go to support geographic regions and apply equally throughout those regions.*'' *One commenter views Florida concrete masonry unit manufacturers as ''contributing much more than the return they will ever receive. This is a bad deal for us, period.*''

Response:

The Order uses the same language as is found in the Act. Specifically, the Act stipulates that ''[t]he order shall provide that not less than 50 percent of the assessments (less administration expenses) paid by a manufacturer shall be used to support research, education, and promotion programs and projects in support of the geographic region of the manufacturer.'' 15 U.S.C. 8705(f)(1).

The Act (and the Order) provide fairness by stipulating that at least 50 percent of assessments collected from a region be used to support that region. The Board will base the return for regional initiatives on assessments collected from a given region. Since the return directly relates to the assessments collected from a region, it will not affect the benefit received by other regions. Assessments collected and subsequent regional support remain proportional to the collected assessment funds. A region receiving more support than another also paid a higher amount and therefore contributes more to the national program, for the benefit of all.

Remember, the 50 percent requirement is a minimum, the Board has the authority to provide a higher percentage back to all the regions. By allocating at least 50% back to the regions, the order ensures some investment will be earmarked to go back to the region while leaving enough to fund national research, education, and promotion initiatives.

The Board will establish procedures for making certain that they are returning the appropriate amounts to each region. While the formal process of receiving and distributing assessments has not yet been established, the Order provides that within 180 days of their initial meeting, the Board will provide for review and approval by the Secretary a proposed evaluation and compliance program and its plan to verify compliance with the Act. The evaluation and compliance program will provide the method and metrics to use to help determine program effectiveness and will outline the way the Board will receive assessments, how to verify compliance, the best method to track sales, and how to document all actions.

The Department has added a stated requirement for the Board to include in the evaluation and compliance program the process by which the Board will meet statutorily-mandated disbursement of collected assessments.

Comment:

A commenter voiced the opinion that it would be ''a far more efficient expenditure of a business' hard-earned money to let them invest 100% of that money in their own regional and local trade associations, of which there are many.'' Commenting on the overall program and amount coming back to each region, another commenter thought ''[t]hat [it] is not a good investment.''

Response:

The Department does not make any conclusions on the efficacies of a checkoff program or the worthiness of the various choices an entrepreneur may have to use its business profits. The Order provides a method by which manufacturers may use pooled resources to further industrywide initiatives and better coordinate amongst themselves. The implementation of this Order relies entirely on an affirmative vote by the industry in a referendum. Certainly, a negative vote would provide the ability to invest 100% of their money allocated for these types of endeavors toward regional and local trade associations. A positive vote does not preclude a company from continuing to invest in regional and local trade associations but would add to it a program that is national and more expansive then those that are regional and local. It is an investment decision left entirely to the industry.

Board Composition and Process

Comment:

Thirteen commenters expressed a negative view of the Board composition. Two commenters wanted to ensure equitable representation on the state level. Two commenters shared the view that the number of board members per region should be based on other factors such as number of CMU producers or sales volume per region. Two commenters voiced a concern about a Board member's qualifications to represent the industry and one commenter stated there is no guarantee that each region will have two representatives.

Response:

The Act proposes that the Board composition would consist of not fewer than 15 and not more than 25 members and provides the criteria to ensure diverse representation of the concrete masonry products industry on the Board. To ensure fair and equitable representation of the concrete masonry products industry and appropriate representative diversity as outlined in the Act, the composition of the Board ''shall reflect the geographical distribution of the manufacture of

concrete masonry products in the United States, the types of concrete masonry products manufactured, and the range in size of manufacturers in the United States.'' These criteria are the elements the Department will use to help create its plan for proper Board composition. The plan will assist in discerning a prospective member's qualifications to represent the industry. The Secretary's selection emphasis will be on attaining the goals for a diverse representation on the Board and will use the plan to help achieve these goals.

The Act stipulates five geographic regions and the States which make up each geographic region. The geographic regions found in the Order reflect Congressional judgment as to a fair balance and geographic distribution of manufacturers in the United States.

The Secretary will use this plan for proper Board composition during selection process to appoint Board members. Once the Order and Board are in place, the Act provides for changes in the states that make up a given region. Specifically, the Act instructs that the Board shall have the power and duty to recommend to the Secretary the reapportionment of the Board membership to reflect changes in the geographic distribution of the manufacture of concrete masonry products, and the types of concrete masonry products manufactured. At a minimum the Board must conduct a review of the Board representation after three years and at the end of each three-year period thereafter. If the Board finds it warranted, the Board will provide to the Secretary for review and approval modifications to the geographic regions described in the Act and reflected in the proposed Order. *See* 15 U.S.C. 8705(f)(3).

So, while the number of regions will remain static at five, the Board has the power and duty to recommend to the Secretary modifications to the Geographic regions in the future to reflect the geographical distribution of the manufacture of concrete masonry products and the types of concrete masonry products manufactured.

The three-year requirement is a minimum and applies to Board membership reflecting the distribution of producers from regions across the country—referred in the Act as reapportionment Recommendations to adjust the geographic regions has no such minimum and could be done at any time at the Board's discretion. The Department has changed the Order to make explicit this distinction and additional discussion of the Board's authority to modify the composition of geographic regions.

Comment:

Two commenters thought that the Board is not representative of the industry.

Response:

The Act specifically provides the manner in which the Department will ensure fair, equitable, and diverse representation of the concrete masonry products industry. Specifically, ''the composition of the Board shall reflect the geographical distribution of the manufacture of concrete masonry products in the United States, the types of concrete masonry products manufactured, and the range in size of manufacturers in the United States.'' As stated above, the Secretary will use these same criteria to form the plan or proper Board composition and then follow the plan to help achieve the goal of fair, equitable, and diverse Board representation of the concrete masonry products industry.

Comment:

On the subject of districts, one commenter thought the Department did not provide enough explanation as to why the proposed Order states only that the districts will ''allow the Board to more easily manage the program.'' The commenter thought this summary justification ''is very thin.''

Response:

Although not required in the Act, the Order subdivides the five geographic regions into 15 districts. As mentioned previously, some examples of how district structure will allow the Board to more easily manage the program include: Use of the district structure will assist in making sure allocation of funding is equally dispersed within a region, it will allow consideration of programs to be more specialized and better address the more localized, disparate, and unique characteristics found within a given region, and it will enable the Board to tailor programs to meet more localized needs. Additionally, the district structure is readily adaptable as the Board may at any time recommend adjustments to the number, composition, and structure within the regions. The Department has added further explanation on the functional purpose of districts to the Order.

Comment:

One commenter felt that with ''States assigned their own district by the Proposed Order, it is highly likely that such states will use their Board representation to ensure the programs and projects favor their state, as they receive the same representation as a district consisting of as many as six other states.''

Response:

The Act sets out the criteria to ensure diverse representation of the industry in selecting Board members. The Department will adopt these criteria into the plan for proper Board composition that it will use to help during the Board selection process. One of the criteria prescribed by the Act is that Board members reflect the ''geographic distribution of the manufacture of concrete masonry products in the Unites States.'' The Act establishes the geographic regions and the plan for proper Board composition will reflect these regions. To help ensure equitable regional distribution and for ease of Board management of the program, the Order further breaks down the regions into districts (see above management discussion regarding districts). But keep in mind that, while the Secretary will strive to make appointments that include every district, the Secretary's primary focus will be on ensuring the regional diversity of Board representatives. District representation is a secondary criterion and not a statutorily mandated requirement. The Board, as representative of the entire industry, will base all its actions on a vote of all Board members, where each Board member would be entitled to one vote, and that a motion would carry if supported by one vote more than 50 percent of the total votes represented by the Board members participating. There is one exception, however, as the Act requires that a two-thirds majority of the voting members of the Board is required to approve a change in the assessment rate.

Comment:

One commenter noted that while focusing its attention on geographic diversity, the Proposed Order (at § 1500.40(b)(2)) ''would permit as much as 13% of the Board to come from a single company. A large company might well benefit from this provision and we believe it is unjust and detrimental to the industry to permit such overrepresentation on the Board.''

Response:

While the intent is unknown, the Act limits the maximum to two members from any single company or its affiliates that may serve on the Board at any one time. A possible reason is to ensure diversity of views by not letting a single company dominate the Board. But remember, it is a maximum of two and not a requirement of two and the Board can consist of a range of between 15 and 25 members.

As the commenter notes, this particular element reflects limits on Board composition and does not fall within the boundaries of the three-

pronged selection criteria that will be a part of the Department's plan to help ensure diversity of representation on the Board. So, if the Secretary appoints two members from a single company, that selection will automatically exclude from consideration additional candidates from that same company.

The distribution of appointments section of the Act, provides the criteria to use to ensure the composition of the Board reflects a diverse representation of the concrete masonry products industry. Those criteria, and the elements the Department will use to help create its plan for proper composition of the Board, are ''geographic distribution of the manufacture of concrete masonry products in the United States, the types of concrete masonry products manufactured, and the range in size of manufacturers in the United States.'' The Secretary's selection emphasis will be on attaining the goals for a diverse Board representation with the requisite expertise and will use the plan to help achieve a Board that is representative of the industry.

Potential Benefits of a Checkoff Program

Comment:

One commenter recognized the merit for commercial contractors and architectural programs but noted that ''the program provides no real value to the Do-It-Yourself consumer.''

Response:

The stated purpose of the Act and the Order is to strengthen the position of the concrete masonry products industry in the domestic marketplace; maintain, develop, and expand markets and uses for concrete masonry products in the domestic marketplace; and promote the use of concrete masonry products in construction and building.

The checkoff program facilitates industry-wide activity. Coordinated activity enables producers to leverage economies of scale in conducting research, education, and promotion of the industry and support the demand for concrete masonry products nationally. Oversight by the Secretary of Commerce would ensure that Board actions comply with the intended purposes of the Act and that concrete product manufacturers share in program expenses as specified in the Act.

The assessments pay for programs that are intended to yield direct benefits to concrete product manufacturers in the form of new markets and increased consumer demand. Costs are expected to result in benefits to businesses that are at least commensurate with these costs. Additionally, research, education, and promotion programs could provide benefit to the general consumer and Do-It-Yourselfer with additional information in which to make an informed decision with regard to building materials.

Escrow Account

Comment:

The Proposed Order requires that 27% of assessments must be held in escrow for the first ten years after implementation. Fifteen commenters were opposed to this requirement and frequently cited to this as an example of government overreach. One commenter pointed to the apparent ''unfair'' treatment when compared to other checkoff programs. And another commenter thought the limitation on the Board'' ''to spending not more than 73% of income and that is before expenses. That is not a good investment.'' Another commenter remarked that they did not find a single other checkoff program that levies this requirement on assessments in this manner.

Response:

The commenters are correct; thus far the requirement to establish an escrow account of this magnitude only exists in this Act. The Order uses the same language as is found in the Act, specifically the Board may not obligate an amount greater than 73 percent of that collected in fiscal years 1–8 and 62 percent of that collected in fiscal years 9 and 10.

The Department has been very diligent in following the Act and does so here. However, as a way or explanation for the apparent uniqueness of this section appearing in this Act, the Department offers the following. At the recommendation of the Congressional Budget Office (CBO), Congress included this section to remain compliant with the statutory Pay-As-You-Go Act of 2010 (*See* 2 U.S.C. 931). The Department published with the Order supporting documents on *Regs.gov* (see *https://www.regulations.gov/document?D=DOC-2020-0002-0004*). The Department included as a supporting document, the CBO report in its entirety. All programs going into effect after 2010 are subject to compliance with the Pay-As-You-Go Act of 2010. Therefore, the Concrete Masonry Products Research, Education, and Promotion Act of 2018 would be subject to the Pay-As-You-Go Act. By way of a counter example, all current agricultural checkoff programs are under a statute that predates the Pay-As-You-Go Act. The Pay-As-You Go Act establishes budget-reporting and enforcement procedures for statutes affecting direct spending or revenues of the Federal government. The Concrete Masonry Products Research, Education, and Promotion actualizes these requirements using an escrow account as outlined in 15 U.S.C. 8715, Limitations on obligation of funds.

The Act defines the covered period for the limitations as that period that begins on October 5, 2018, and ends on the last day of the 11th fiscal year that begins on or after such date (*i.e.,* end of fiscal year 2029 or September 30, 2030). After the covered period, the Board may withdraw and obligate in any fiscal year an amount in the escrow account that does not exceed ⅕ of the amount in the escrow account on the last day of the covered period. The Department has revised the Order to better reflect the 62 percent limitation in fiscal years 9 and 10 and the final 11th year that ends September 30, 2030, as stipulated in the Act.

Government Authority To Implement a Checkoff Program

Comment:

Four commenters thought the proposed Order was too vague in defining the limits of government authority and fourteen commenters believe the Order was an example of Government intrusion. The comments expressed a concern that the proposed Order provides more government oversight, more overhead, unchecked authority to intrude and scrutinize company operations, another government entity involved in a privately-owned producer's daily operation, and of just another chance for the government to get their hands on more of our hard-earned dollars. One commenter summarized the view— ''when was the last time we have looked at a government program and thought that is how I would want my business to be run. These programs usually start out with the best of intentions and then spiral out of control.'' Another commenter thought there should be a vote after a one or two years to determine whether to continue the program.

Response:

The Act and Order confine the Secretary's authority to the subject matter of the Act, specifically 15 U.S.C 8701–8717. The Secretary does not exercise any authority or control outside the bounds of the Act.

The Board, the composition of which is representative of the industry, will administer the order and receive assessments. It is the Board that carries out the programs and projects of research, education, and pays the costs of such programs and projects. The Department does not have access to the

program funds and the exercise of its authority is limited to ensuring the Board and industry properly carry out the provisions of the Act and Order.

The Department's role with respect to individual companies is in the form of as-needed evaluation and compliance. Evaluation, as noted by several commenters, will help ascertain the effectiveness of the program. The Act requires several studies and reports on the subject of program effectiveness. These reports (at proscribed intervals of annual, biennial, three-year, and five-year) will be available for public review and will provide several opportunities for those affected by the program to discern whether the proposed benefits have met expectations. With regard to compliance, the mandatory nature of the Act requires the Department to enforce the payment of assessments as prescribed by the Order and carried out by the Board.

Additionally, the Act and Order provide a mechanism to conduct a ''sunset'' referendum at five-year intervals to determine whether to continue the program. These potential ''sunset'' referenda are triggered at the request of at least 25 percent of the affected industry (those eligible to vote).

Comment:

One commenter thought the Order calls for what seems to be an intrusion into the affairs of private business. Another commenter voiced concern that the ''Order allows for the audit and inspection of the financial records of manufacturers. It also requires that these records be retained for at least 7 years.'' Another commenter thought it would impact competitive bidding from vendors. Another commenter was concerned there were no assurances of 3rd party auditing of a company's books

Response:

To provide the Secretary with needed authority to ensure compliance with the Order, the Act provides the Secretary the authority to require manufacturers to retain sufficient records to ensure compliance with the order and authorizes the Secretary to inspect those records the Act requires companies to maintain. Without this authority, the Secretary would have no ability to enforce the requirements of the Act and its Order. The requirement to retain records and allow for the Secretary to inspect such records does not equate to making a company's financial records available for public scrutiny and does not create the opportunity for vendors to use the information to its benefit in bidding. The seven-year requirement found in the order reflects the generally-recommended retention time for business records. Lastly, the Act requires all manufacturers covered by the order to make records available for inspection, that inspection will only be by an agent or employee of the Board or Department and not a third party.

Program Evaluation

Comment:

Three commenters voiced a concern that the Order lacked adequate measures of success or effectiveness.

Response:

Evaluation and effectiveness are very important to the Department and reviewing this order to make sure it achieves the Act's purpose is foremost. Within 180 days of the first Board meeting, the Secretary requires the Board to provide for approval an evaluation and compliance program that the Board will follow. This program will include the method and metrics the Board will use to help determine program effectiveness. Further, the Department has added a section to the Order that requires the Board to establish annual research, education, and promotion objectives and performance metrics for each fiscal year subject to approval by the Secretary. This same requirement appears in the Act at 15 U.S.C. 8704(i). Objectives and performance metrics should consider and reflect those listed in 15 U.S.C. 8716. The Board will make all objectives and metrics available for public review.

In addition to these added requirements, there are several reports that will study the success and effectiveness of this checkoff program. The Act requires the Secretary to prepare a study and submit to Congress a report examining the appropriateness and effectiveness of applying the commodity checkoff program model to a nonagricultural industry, taking into account the program established by this chapter and any other checkoff program involving a nonagricultural industry (see 18 U.S.C 8717).

Further, the Secretary requires the Board to fund an independent evaluation of the effectiveness of the Order and other programs conducted by the Board after five years and every three years thereafter.

Lastly, the Order requires the Board to prepare and make publicly available comprehensive and detailed reports that identify and describe all programs and projects undertaken by the Board during the previous two years, those planned in the subsequent two years, and detail the allocation of Board resources for each such program or project.

To ensure full transparency of Board operations, reports also will include the overall financial condition of the Board, a summary of the amounts obligated or expended during the two preceding fiscal years, and a description of the extent to which the objectives of the Board were met according to the established annual objectives and performance metrics. The table below provides a quick overview of the reports the Board and Department will produce to ensure transparency of the checkoff program and its operations.

Table 4. Table of reports that provide transparency of program operations

Report	Originator	Submit to	Initial	Frequency
Evaluation and Compliance	Board	DOC	1-year	Annual
Annual Budget	Board	DOC	1-year	Annual
Audit of Board books and records	Board	DOC	1-year	Annual
Program and resources (2-year forward and back)	Board	DOC	2-year	Every 2 years
Appropriateness of a non-agricultural commodity checkoff program	Board and Department	GAO	3-year	One time requirement
Evaluation of Board programs	Board, Independent reviewer	DOC	5-year	Every 3 years thereafter

Purpose of the Order

Comment:

The Act sets the initial assessment rate at one cent per concrete masonry unit sold. Three commenters stated concrete masonry product manufacturers not subject to the assessment should not be eligible to become Concrete Board Members ''as a matter of fairness'' and ''to ensure that assessment funds are appropriately spent for the benefit of those manufacturers that are assessed,'' i.e., the Board should not include manufacturers that do not pay assessments. Ten commenters suggested more broadly that the Department change the language throughout the Order to reference concrete masonry units rather than concrete masonry products for similar reasons.

Response:

The Act is clear that Board membership is not to be limited to concrete masonry unit manufacturers (*i.e.,* those subject to the assessment). Specifically, the Act provides that ''[t]he Board shall consist of manufacturers,'' 15 U.S.C. 8704(b)(1)(B)(iii); ''manufacturers'' is defined as ''any person engaged in the manufacturing of commercial concrete masonry products in the United States.'' 15 U.S.C. 8702(12). The Act further provides that ''[t]o ensure fair and equitable representation of the concrete masonry products industry, the composition of the Board shall reflect the geographical distribution of the manufacture of concrete masonry products in the United States, *the types of concrete masonry products manufactured,* and the range in size of manufacturers in the United States.'' 15 U.S.C. 8704(b)(2)(A) (emphasis added). Thus, the Act is unambiguous that all concrete masonry manufacturers are eligible for Board membership and not just concrete masonry unit manufacturers, and the Order reflects that statutory directive.

Beyond the specific statutory language with respect to Board eligibility, it is also clear that the overall goal of the Act is to promote and enhance the concrete masonry products industry as a whole, rather than simply one segment of it. Thus, while the assessment is levied against concrete masonry units sold (*see* 15 U.S.C. 8705(c)(1)), the purpose articulated in the Act itself is ''to authorize the establishment of an orderly program for developing, financing, and carrying out an effective, continuous, and coordinated program of research education, and promotion, including funds for marketing and market research activities, that is designed to—

(1) Strengthen the position of *the concrete masonry products industry* in the domestic marketplace;

(2) Maintain, develop, and expand markets and uses *for concrete masonry products* in the domestic marketplace; and

(3) Promote the use of *concrete masonry products* in construction and building.''

15 U.S.C. 8701(a) (emphasis added). The references in the Order to the broader set of concrete masonry products rather than to the subset of concrete masonry units reflects the purposes set out in the Act.

Company Ownership

Comment:

Two commenters stated an objection that the Proposed Order does not require U.S. company ownership to participate in the referendum and therefore allows foreign-owned businesses to participate.

Response:

The Act only applies to manufacturers engaged in the manufacturing of commercial concrete masonry products in the United States. All manufactures of concrete masonry products that physically manufacture in the United States are subject to the Act and those that manufacture concrete masonry units are subject to the assessment. The Act does not require U.S. ownership to be subject to the Act, nor does foreign ownership affect eligibility to participate in the referendum.

Secretarial Appointments to the Board

Comment:

One commenter stated the proposed Order's authorization of independent Secretarial appointments violates the statute. Another commenter voiced a concern that ''a Secretary might use political favoritism in selecting Board members and leaves the industry dependent upon the Secretary not to act in the Secretary's own interest.'' One commenter suggested the Board's dismissal process violates the statute. Two commenters voiced concern that ''the Board serves at the pleasure of the Secretary.'' One commenter thought the proposed Order authorizing independent Secretarial appointments violates the statute because the commenter thought ''the statute requires

that the Secretary only make appointments from nominations by manufacturers.''

Response:

The Act provides that the Secretary shall appoint Board members and leaves to the Secretary the manner in which the Secretary will establish an adequate pool of candidates. As an appointment, the Secretary must have sufficient latitude to select individuals of her choosing and not unduly be limited in her discretion in appointing the members of the Board. While it does not appear in the Act itself, when the President signed the legislation the President issued a statement, concurrent with the Act that provided:

> . . . . the Act requires the Secretary of Commerce to appoint the members of the Concrete Masonry Products Board (Board), who would be inferior officers, from a list of nominees submitted by concrete masonry product manufacturers. It also provides that, if the Secretary fails to appoint someone from that list within a specified period, 'the first nominee for such appointment shall be deemed appointed' The Secretary's failure to make a timely appointment from the list will result in the appointment of an inferior officer by a private party, which would violate the Appointments Clause. Furthermore, the requirement to appoint from a list of nominees, if the list is too limited, may unduly limit the Secretary's constitutional discretion in appointing the members of the Board. In those circumstances, my Administration will treat these requirements as advisory and non-binding.

Therefore, in keeping with the President's signing statement, to the extent selection criteria limits the Secretary's noted discretion in making appointments, the Secretary will treat this limitation as advisory in nature. Hence, the Department will not include in the Order those provisions of the Act that are inconsistent with the Presidential signing statement including those related to ''deemed'' appointment of members and those that may unduly limit the Secretary's discretion in making appointments. The Order as written reflects the Secretary's discretion in making appointments.

To more closely align with the Act, the Department has added language to § 1500.41(c) of the final Order to make explicit the nomination process to fill members whose terms expire and to fill naturally occurring vacancies. Additionally, the Department will change the language in § 1500.44(a) of the final Order to better match that found in the Act and make clear ''that if a member or alternate of the Board who was appointed as a manufacturer ceases to qualify as a manufacturer, such member or alternate shall be disqualified from serving on the Board.'' Even in the case where a member ceases to qualify as a manufacturer, the power to remove the appointed Board member and fill the vacancy remains with the Secretary.

The Board does not have independent authority to remove one of its members. While the Board may make recommendations, the Secretary alone has the authority to remove a Board member. As an appointment all members serve at the pleasure of the Secretary and therefore the Secretary retains the prerogative to remove any Board member. Some examples of possible dismissal action include the Secretary making a determination that a member's continued service would be to the detriment of fulfilling the purpose of the Order, which could include a member's failure or refusal to perform his or her duties properly or for engaging in acts of dishonesty or willful misconduct.

To reiterate, the Department is following the President's guidance and treating those requirements that may unduly limit the Secretary's discretion in making appointments as advisory in nature and not binding.

Finally, the Act provides that the Secretary may make appointments from nominations by manufacturers. As an inclusive but not exclusive clause, the Order aligns with this language and provides that the Secretary will consider nominations submitted and other manufacturers for appointment, as the Secretary may deem appropriate and will give consideration to recommendations of the Board, self-nominees, and more expansive input from sources available to the Secretary.

Comment:

One commenter thought that the proposed Order violates the Appointments Clause, as noted by the President in his signing statement. One commenter thought ''the Department simply disregards the provisions in the Act that the President has deemed unconstitutional. However, neither the President nor the Secretary has such authority. If the President believes a law is unconstitutional, he can veto the law rather than sign it. However, it is the federal courts (and ultimately the United States Supreme Court), not the President, that are the arbiters of whether a law is constitutional. Therefore, the Secretary' s reworking of the statute in the Proposed Order is simply illegal, and subject to reversal.''

Response:

As mentioned previously with regard to the Appointments Clause of the Constitution, the President stated that ''. . . in those circumstances, my Administration will treat these requirements as advisory and non-binding.'' The Order as proposed, adheres to the President's statement. Therefore, in keeping with and as directed by the President's signing statement, to the extent selection criteria limits the Secretary's noted discretion in making appointments, the Secretary will treat this limitation as advisory in nature.

Comment:

One commenter thought the proposed Order violates the statute.

Response:

With the exception of those elements that fall within purview of the President's Statement and are therefore advisory in nature, the Order fully adheres to the Act.

Scope of the Act

Comment:

One commenter felt the limitation of personal liability of Board Members is not authorized by the statute.

Response:

The Secretary appoints members to the Board and under the Appointments Clause, the members of the Concrete Masonry Products Board (Board) would be inferior officers. As officers they cannot be held personally liable when they exercise their discretionary duties of their office, in good faith, while acting within the scope of their authority. The Department has edited the language of § 1500.85 to better reflect the limitation on personal liability.

Comment:

One commenter stated the authorization of research, education and promotion exceeds the authority of the statute.

Response:

Whenever possible the order closely adheres to the language found in the statute. The title of the Act is the Concrete Masonry Products, Research, Education, and Promotion Act of 2018.

The Act's purpose is to authorize the establishment of an orderly program for developing, financing, and carrying out an effective, continuous, and coordinated program of research, education, and promotion, including funds for marketing and market research activities, that is designed to—

> (1) strengthen the position of the concrete masonry products industry in the domestic marketplace;
>
> (2) maintain, develop, and expand markets and uses for concrete masonry products in the domestic marketplace; and
>
> (3) promote the use of concrete masonry products in construction and building.

In its review and writing of the Order, the Department was diligent and

strident in its efforts to adhere to the stated purpose of the Act. The Department used this stated purpose to guide its decisions with regard to the Order, to remain within the authority granted by the Act, and to ensure close compliance with the Act.

Comment:

One commenter thought the proposed Order omits the statute's requirement of an independent auditor.

Response:

The Order stipulates in paragraph (p) of § 1500.47, Powers and Duties that the Board will cause its books to be audited by a certified public accountant. The Department has added language to make explicit the requirement for the Board, at the end of each fiscal year, to have the books and record of the Board audited by an independent auditor and submit to the Secretary a report of the audit.

Comment:

One commenter thought that the proposed Order exceeds authority granted by the statute with regard to complaints of violations. Specifically, ''statute only gives the Board the responsibility to gather facts surrounding a complaint and to report any complaints of violations to the Secretary. The determination as to whether enforcement of the law is warranted is laid squarely at the feet of the Secretary, not the Board. To do otherwise [as the commenter interprets the proposed Order] would be to create stark conflicts of interest in which Board members may be evaluating complaints against their own industry competitors.''

Response:

The power and authority to investigate resides with the Secretary. Specifically, as set forth in the Act, ''[t]he Secretary may conduct such investigations as the Secretary considers necessary for the effective administration of this chapter, or to determine whether any person has engaged or is engaging in any act that constitutes a violation of this chapter or any order or regulation issued under this chapter.'' (15 U.S.C. 8709(a)).

The Order uses language that makes explicit the limitations on the powers the Board has regarding complaints of violations. The Department concurs with the commenter that the Board's powers and duties with regards to complaints is to receive the complaint, gather facts surrounding a complaint, and report any complaints of violation the Secretary. The Order's use of the terms receive, evaluate, and report only was meant to convey just the powers and duties the commenter mentions. Use of the word evaluate was not meant to expand the Board's authority. The Department has replaced the word ''evaluate'' with the word ''investigate'' as the commenter suggests.

Program Budget

Comment:

One commenter stated ''the [p]roposed Order allows the Board to obfuscate its precise expenditures.''

Response:

The Department believes the Order accurately reflects the Act and levies the statutorily mandated requirements for the Board to report on all of its expenditures (for a list see the table of reports that provide transparency in the response to comment under the heading of Program Evaluation). Specifically, the Board is to periodically prepare and make available to the public and manufacturers reports of its activities and, at least once each fiscal period, to make public an accounting of funds received and expended. Further, the Order requires a) at the end of each fiscal year and at such other times as the Secretary may request, the conduct of an audit by an independent auditor and submission of a report of the audit directly to the Secretary. Additionally, the Order requires that the Board, every two years, shall prepare and make publicly available a comprehensive and detailed report that includes an identification and description of all programs and projects undertaken by the Board during the previous two years as well as those planned for the subsequent two years and detail the allocation or planned allocation of Board resources for each such program or project. Such report shall also include:

(1) The overall financial condition of the Board;

(2) A summary of the amounts obligated or expended during the two preceding fiscal years; and

(3) A description of the extent to which the objectives of the Board were met according to the metrics required under § 1500.50(a)(1).

Comment:

One commenter thought the Order gives the Board too much independent power over its budget and expenses. The commenter stated that ''the proposed Order treats the shifting of 10% of funds in a category to another category as de minimis. But 10% is far too high to be considered de minimis. In fact, in almost all contexts it is not only too large to be de minimis, it is considered material. This shift in funds merits consideration—the fact the proposed Order seeks to claim 10% as de minimis again demonstrates a consistent effort throughout the proposed Order to reduce the Board's accountability when it comes to properly managing its budget. Moreover, not only is this amount not de minimis, it subverts the Secretary's statutory authority to set the budget for the Board.''

Response:

The Department did not intend the use of the term ''*de minimis*'' to make a characterization or judgment as to the amount of money but rather was using the term in connection with the allowance of the Board to have some flexibility in managing its business operations. Simply meant as a good business practice, the Department is allowing the Board to make unanticipated adjustments to its approved annual programs. The ten percent provides the flexibility to allow the Board to make an adjustment between two approved categories, but the adjustment is specific to an annual budget, is confined to the current fiscal year, and is measured against the two approved categories being adjusted, *i.e.,* it is not 10% of the total amount of all assessments received. Subsequent budgets would require adjustment and approval before the Board implements it beyond a given year. Therefore, an adjustment does not carry over from year-to-year but would require approval the next time the Board submits an annual budget for approval. The Department has removed from the Order the ''*de minimis*'' characterization of this allowed funding shift.

Language of the Act and the Order

Comment:

With regards to program budget, one commenter points out two apparent discrepancies in the language of the Order with that of the Act. In the Order the clause describing the Board's submission of its annual budget did not include the clause ''the probable cost of each promotion, research, and information activity proposed to be developed or carried out by the Board.'' Further the commenter points out in the section outlining requirements of contracts the Order's use of the phrase ''estimate the cost'' while the Act uses the phrase ''specify the cost.''

Response:

First, the Department expects an annual budget submission to be of sufficient detail for the Department to evaluate all promotion, research, and education activities of the Board for an upcoming year. By its definition, an annual budget would include cost estimates to perform each activity. Second, the Department considers use of the phrase ''estimate the cost'' vice ''specify the cost'' as being more synonymous vice a notable distinction.

While the Department does not necessarily agree with the commenter's

conclusions that these omissions would ''reduce accountability and responsibility by the Board for the program,'' the Department agrees that, whenever possible, the Order will use the language of the Act. To maintain its close adherence to the Act, the Department has added to the final Order the missing clause and use the word ''specify'' versus ''estimate.''

Comment:

In the section describing the powers and duties of the Board, one commenter noted two discrepancies between the language used in the Act when compared to that used in the Order. The first is the missing word ''generic'' in the Order under the powers and duties of the Board. The Act provides a power and duty of the Board to ''carry out a program of generic promotion, research, and education regarding concrete masonry products.'' Yet the Order does not include the term ''generic.'' The commenter thought removing the term ''generic'' allows Board members to influence Board projects or programs to favor specific geographic areas or concrete masonry unit manufacturers within a region. This would undermine the spirit and purpose of the proposed Order, which purports to benefit the industry as a whole. The Second is the missing word ''products'' in the order also under the powers and duties of the Board. ''The Act provides in the contracts and agreement section the Board may enter into contracts or agreements 'to carry out generic research, education, and promotion programs and projects relating to concrete masonry products . . .' Again, the language of the proposed Order drops a key word from the statute enacted by Congress and signed into law by the President. This time, the term it drops is 'products.' The Board is only authorized to enter into these agreements for purposes that relate to concrete masonry products, not concrete masonry generally.''

Response:

The Department acknowledges the omission of these words and this final rule reflects the correction to the referenced sections to include these terms. The Department has added the words ''generic'' and ''products'' in their respective places in the final Order.

Comment:

One commenter pointed out an apparent drafting error explaining that § 1500.60(e)(3) makes reference to a non-existing section. Equally important, the commenter points out that the order does not include in its annual budget (found in § 1500.50), a requirement to discuss whether previous objectives were met.

Response:

The Department thanks all commenters for their diligent reading of the Order. Keep in mind the requirements listed for the annual budget in § 1500.50 are minimum requirements for the annual budget. The Secretary has the discretion to levy additional requirements for the Board to include in its annual budget and the Board as well, at its discretion can include additional information in its annual budget submission. The Department has fixed the noted drafting discrepancy and has included as another minimum requirement that the Board include in its annual budget a comparative analysis to the preceding year's programs, plans, and projects.

Board Membership

Comment:

One commenter asked ''what a reasonable amount of time'' would be for the Secretary to appoint a Board, could it be one or two years. And would assessments commence prior to a Board being in place.

Response:

Although the Act is silent as to how long the Secretary has to appoint initial Board members, if the referendum is successful the Department anticipates issuing a call for nominations when it publishes the final results of the referendum. Barring a recission, the effective date of the Order will be November 30. The length of time to review and select from a qualified pool of candidates would be measured in months vice years.

The Board will set the date of the receipt of assessments. The Board has the latitude but not the requirement to make assessments ''retroactive'' to the effective date of the Order. The Board is made up of representatives of the industry; their vote on when to begin receipt of assessments will equally be imposed upon the Board members as well.

Assessments

Comment:

One commenter thought the proposed Order ''creates a retroactive tax.'' Several commenters referenced that the Department is ''levying a tax.'' Another commenter stated, ''it is essentially another tax on the products that we produce will ultimately result in the end user having to pay more for a product than they otherwise would in today's market.''

Response:

There is no authority for the Department to enact a tax in either the Act or the Order. The Act sets out the assessment rate and that the assessment rate shall be $.01 per concrete masonry unit sold The Board will collect an assessment which the Act stipulates the Board must use to establish an orderly program for developing, financing, and carrying out an effective, continuous, and coordinated program of research, education, and promotion, including funds for marketing and market research activities, that is designed to—

(1) strengthen the position of the concrete masonry products industry in the domestic marketplace;

(2) maintain, develop, and expand markets and uses for concrete masonry products in the domestic marketplace; and

(3) promote the use of concrete masonry products in construction and building.

Whether or not a manufacturer chooses to pass along to customers the assessment paid is a business decision and not a government requirement.

Comment:

One commenter believed the Proposed Order exceeds the debt collection authority in the statute.

Response:

The Act establishes an assessment upon a manufacturer if the manufacturer has manufactured concrete masonry products during a period of at least 180 days prior to the date the manufacturer must remit the assessment to the Board. Further, the Act authorizes the Secretary to set the rate of and levy both a late payment as well as an interest charge on manufacturers that fail to timely remit their quarterly assessment. Since the authority would be without force if the Secretary could not otherwise enforce the assessment payment, the Secretary has the same remedies available to the Executive Branch. In fact, 15 U.S.C. 8708 (d) provides for additional remedies available to the Secretary. It specifically does not preclude the Secretary from availing of other remedies as appropriate for enforcing collection, to include to actions under Federal debt collection procedures.

Comment:

One commenter thought the proposed Order exceeded the statutory authority by permitting others to collect assessments.

Response:

The Act gives the Secretary broad discretion on the process of collecting assessments. The Act states that assessments required under the Order shall be remitted by the manufacturer to the Board in the manner prescribed by the Order and the Order shall provide that assessments required under the Order shall be remitted to the Board not less frequently than quarterly. While the formal process of receiving assessments has not yet been established the Order

provides the requirement to propose an evaluation and compliance program. The evaluation and compliance program will include the manner in which the Board will receive assessments. The Board has the latitude to recommend to the Secretary an entity that will receive assessments on behalf of the Board.

Comment:

Four commenters requested clarification on the assessment rate of $.01 per concrete masonry unit sold. One commenter sought clarification on whether ''the period of applicability applied to when the first sale occurs and the assessment is paid, or if the period of applicability extends until the final sale when the end customer purchases a CMU. If it is the la[t]ter, it is possible that a CMU manufacturer could purchase a load of CMUs from another manufacturer, paying the assessment.'' Another commenter wanted to know if the provision that outlines that the ''first'' sale of a CMU is assessed, ''includes those CMU's sold amongst producers. Separating these sales will be administratively challenging. Required by the Act, manufacture[r]s are to identify the total amount due in assessments on ALL sales receipts, invoices, or other commercial documents of sale as a result of the sale of concrete masonry units. This can be problematic on certain projects or with certain customers that do not recognize fees in their payables systems and all costs are to be rolled up in the unit pricing. This has the potential to have the exact opposite effect and drive potential consumers of our products to other types of building materials that may be more affordable.'' Another commenter stated there will only be an assessment on the first sale of concrete masonry units. ''This seems counterintuitive to most taxes or assessments. Many times sales taxes are not collected on items bought for resale purposes, meaning that tax is collected on the final sale. It is common for CMU manufacturers to sell products to one another which are then sold in a final sale to the end customer.''

Response:

The Act sets the initial rate as the assessment rate on concrete masonry products shall be $.01 per concrete masonry unit sold. The Order provides further guidance that manufacturers will base and record the assessment only on the first sale of a concrete masonry unit and specifically precludes subsequent sales of the already assessed concrete masonry unit. Therefore, there will only be a single assessment, paid once, for each concrete masonry unit at its initial sale. The manufacturer of the concrete masonry unit pays the assessment for each block sold. The record of this initial sale is the one the Order requires. The Order requires the Board, within 180 days of their initial meeting, to provide a proposed evaluation and compliance program for review and approval by the Secretary. The Department expects this evaluation and compliance program will reflect the business operations of the industry, will fully explain the procedures of assessment payment, and the specific documentation manufacturers will need to meet recording requirements.

Comment:

One commenter stated the assessment, as written, would be levied against paver and retaining wall block manufacturers, who do not have the opportunity to weigh in on the assessment through the voting process. Another comment mentions the Order's definitions of ''concrete masonry products'' and ''concrete masonry units'' do not clearly delineate the differences between concrete masonry units and concrete masonry products generally. ''It is critically important that concrete masonry units be clearly defined, as this definition determines how manufacturers will be taxed and whether they will have a vote in the initial referendum.'' And, as previously mentioned one commenter felt the list was too expansive as to the definition of ''what is a 'concrete masonry unit' well beyond the concrete gray block to include a vast list of concrete masonry products. Extending the assessment to an expanded definition of 'concrete masonry unit' to include specialty products works a hardship on concrete masonry products manufacturers that will not see any benefits from a group commodity marketing program for the specialty, value added, products they have individually developed and marketed at their own expense.'' And one comment took exception to listing products ''other than gray block.''

Response:

Manufacturers of concrete masonry products will collect assessments based on the number of concrete masonry units sold. The manufacturers will then remit the collected assessments to the Board. *Concrete masonry unit* means a concrete masonry product that is a manmade masonry unit having an actual width of 3 inches or greater and manufactured from dry-cast concrete using a block machine. Such term includes concrete block and related concrete units used in masonry applications. While they are concrete masonry products, hardscape products such as pavers and segmental retaining wall units are not concrete masonry units and therefore are not subject to assessment under this Order.

The definition of concrete masonry unit specifically includes items in addition to gray block. The list reflects those concrete masonry products that fall within the definition of concrete masonry unit—a concrete masonry product that is manmade masonry unit have an actual width of 3 inches or greater and manufactured from dry-cast using a block machine. Such term includes concrete block and related concrete units used in masonry applications. As there were no other comments in opposition to the listing, the Department will use this list to identify those products that qualify as a concrete masonry unit. See the previous section whose heading is ''Industry Background'' for a listing of examples that qualify as concrete masonry units.

Comment:

One commenter stated the ''$0.05 per unit seems excessive and sees no provision requiring any increases be approved by those funding the project. As written, the Board can do it alone. That is five times what is promoted by those in favor of this order.'' Another commenter asked to change the rules for assessment increases and ''cap it at a lower number because pennies matter and ramping it up would be economically damaging.'' Another commenter felt the Board will be ''pressured to increase assessments in order to make up for the escrow requirement.'' Another commenter felt any change in assessment rate only should be with ''a majority vote of qualified and registered manufacturers, the same as needed to put the order in place, vice a two-thirds majority of the Board members.'' Another commenter suggested ''it would be prudent to set an initial moratorium on assessment changes for the first five years of the program to better understand the impact of the programs, grants, etc. as a way to avoid a rapid and early assessment increase.''

Response:

The Act and the Order leave to the Board, which represents the interests of the industry, the discretion to make a decision on an appropriate rate within the parameters established in the Act. The Act establishes the initial rate of assessment, provides the authority to change the assessment rate, limits the number to one per year and amount of increase or decrease to one cent per year, and sets $.05 as a maximum allowable assessment rate. The Order reflects these same criteria. The initial assessment rate on concrete masonry products is $.01 per concrete masonry unit sold.

As representatives of the industry, the Board members have the collective authority to change the assessment rate if voted by a two-thirds majority of voting members. The rationale for increasing or decreasing this value is at the discretion of the Board, and while the Act does place restrictions on the amount an assessment changes, it does not restrict the manner in which the Board makes this determination.

The Act only places a cap on the number and amount of assessment increases or decreases, it does not preclude the Board from deciding whether to self-impose a limit to the number of increases or a freeze for a duration of time, but any such self-imposed limitation still would be subject to overrule if done so by a two-thirds majority. Lastly, the language found in the Order aligns directly with that in the Act and does not provide the Department with the authority to make changes to the Order as suggested by some of the commenters.

Other Checkoff Programs

Comment:

Three commenters stated a concrete masonry products checkoff program would be at a disadvantage when compared to other checkoff programs, specifically noting the prohibition on engaging in any promotion, research, or education that would be disparaging to other construction materials as well as a much lower or no escrow account. One commenter thought this clause ''*could be used to limit or deny the ability to point out the advantages of masonry over other materials. This is a completely unacceptable limitation. How do you plan to protect our right to point out facts of masonry that make it a superior, safer building material than wood in many if not most applications?*'' *Another commenter characterized the apparent disadvantage as* ''*a unilateral disarmament of our industry that allows our competitors to come after us but does not allow us to defend ourselves.*''

Response:

The Act is the first that provides the authority for a concrete masonry products checkoff program at the Department of Commerce. The list of prohibited activities in the Act and Order are consistent with those found in checkoff programs within the U.S. Department of Agriculture. Specifically, the Act states the prohibited activities include prohibition on: Influencing legislation, elections, or governmental action; engaging in an action that would be a conflict of interest; engaging in advertising that s false or misleading; engaging in any research, education, or promotion that would be disparaging *to other construction materials;* or engaging in any promotion or project that would benefit any individual manufacturer. As the commenter notes, the prohibition in statutes under which U.S. Department of Agriculture (USDA) operates is slightly different in that it prohibits engaging in a program that that may be false or misleading or disparaging *to another agricultural commodity.* While this appears to be an incongruity, in practice and as a matter of policy the USDA does not allow its checkoff programs to engage in any action that disparages another commodity, regardless of whether it is agricultural. Of note, the last prohibition listed regarding the prohibition on benefiting *any individual manufacturer* should be read to mean it cannot be for *the sole benefit of any individual manufacturer.*

Notice Requirement

Comment:

One commenter stated that the proposed Order has inadequate notice procedures for the referendum.

Response:

The **Federal Register** is the official daily publication for rules, propose rules, and notices of Federal agencies, as well as Executive orders and other Presidential documents. Unless otherwise specifically provided by statute, filing of a document, required or authorized to be published by 44 U.S.C. 1505, except in cases where notice by publication is insufficient in law, is sufficient to give notice of the contents of the document to a person subject to or affected by it (see 44 U.S.C. 1507).

With the exception of Federal holidays, the Office of the Federal Register publishes the **Federal Register** Monday through Friday, by 9 a.m. ET. The Department published referendum procedures in a proposed rule in the **Federal Register** (85 FR 65288, October 15, 2020). The Department provided the public with thirty days to comment. The Department addressed the comments received in its notice of the final referendum procedures published the referendum procedures final rule published in the **Federal Register** (86 FR 23271, May 3, 2021).

Department's Summary of Industry Background and Regulatory Flexibility Act Analysis

Comment:

One commenter took issue and believed invalid the comment made in the Department's Industry background found in the notice of the proposed Order. Specifically, the commenter the Department's statement that ''*most of the producers acting alone do not have the resources to efficiently market the value of the product or conduct the research and education to promote market growth*'' *The commenter felt that* ''*[w]hile the statement may be true for some smaller manufacturers, this statement does not reflect the reality of producers as a whole.*'' *And characterized it as* ''*at best, a very imprecise generalization that does not accurately represent the current educational and promotional efforts of concrete masonry unit construction.*'' *By example the commenter explained that there are existing national, state and regional associations meeting these needs and effectively driving different research, education, and promotion priorities. The commenter felt that* ''*[t]o the extent that the Proposed Order is based on the quoted statement, it sits on a weak foundation.*''

This commenter also felt misleading the Department's observation that between 2007–2017, the number of establishments, number of employees, annual payroll, value added, and value of shipments declined in the industry. The commenter points to the last ten years to state there has been ''*rapid growth in the concrete masonry unit manufacturing industry. . . . In fact, we have experienced an increase in sale of concrete masonry units of over 50% in this 10-year period.*'' *Again, the commenter believes that* ''*[r]elying on stale, irrelevant data is yet another dubious cornerstone for the proposed Department action.*''

Lastly the commenter questioned the Department use of data compiled by industry experts to make decisions. ''*Yet those experts are not identified, nor is their work presented. At a minimum, the Secretary should identify these experts and provide the experts' qualifications as well as their reports that the Secretary relied onto make decisions.*''

Response:

The analysis to which the commenter refers was not a consideration for the Department's finding that the Order is consistent with and will effectuate the purpose of the statute. The Department made all its decisions, its findings, and the publication of the proposed Order based on the Act alone and not on the rulemaking Background Information section or the accompanying Regulatory Flexibility Act (RFA) analysis. The section entitled Background Information provided in this rulemaking by the Department was not a finding of fact but rather simply an observation based on the relative size of most of the producers noted in the Department's RFA and economic analysis of the industry.

The references to ''Industry experts'' refer to information provided by the National Concrete Masonry Association (NCMA). The total number of estimated concrete masonry units is from the NCMA 2019 CMU Sales Report (*https://ncma.org/updates/news/2019-cmu-sales-survey-released/*). While the Department did not make specific reference to the NCMA survey in its Notice, it did publish with the Order supporting documents on *Regs.gov* (see *https://www.regulations.gov/document?D=DOC-2020-0002-0004*). Included was the economic analysis from which the regulatory analysis originated and the NCMA report is cited there. To reiterate, the Department's use of the information was simply to provide a general background of the industry. While members of the industry submitted a proposal for a draft Order, the Department did not rely on industry experts in its decision-making, and specifically with regard to its determination that the Order is consistent with and will effectuate the purposes of the Act.

The Department concurs with the commenter's example and believes national, regional, and state associations are good illustrations for the premise that by combining and coordinating efforts across producers it can drive and advance the research, education, and promotion of concrete masonry unit construction.

Keep in mind that it is entirely up to the industry whether or not this Order goes into effect. The Order only will become effective based on the results of an industrywide referendum. The Order becomes effective November 29, 2021. The Secretary will publish a determination of the results of the referendum that it has been approved by a majority of manufacturers voting who also represent a majority of the machine cavities in operation of those manufacturers voting in the referendum. In the event the referendum does not reach a majority approval, the Department will publish a document in the **Federal Register** to withdraw this final rule before the effective date.

Intellectual Property

Comment:

One commenter thought that the proposed Order creates confusion as to the ownership of intellectual property.

Response:

The Order outlines the method for establishing ownership of intellectual property that is financed with funds remitted to the Board. A written agreement between the Board and the party receiving funds will establish ownership and allocation of rights to patents, copyrights, inventions, or publications, developed through the use of funds remitted to the Board under the Order.

Referenda

Comment:

Two commenters voiced concern for ensuing referenda, that they allow any concrete masonry product manufacturer to vote, even if they are not subject to the assessment. One commenter states ''only manufacturers subject to the assessment should be eligible to vote in any future referenda.'' Another commenter stated that while the ''initial referendum is limited to manufacturers subject to the assessment, future referenda are not.''

Response:

Eligibility to vote in subsequent referenda will be dependent on the scope of an order and those that would be subject to the assessment of the proposed Order.

The Act covers the concrete masonry products industry and leaves open the potential for other orders, however it limits to one, the number of orders active at any given time. The Department differentiates the current Order with one that may occur in the future. The Department recognizes that a future proposed order may differ significantly from the current Order, and therefore the Department will base eligibility to vote in a subsequent referendum on the scope of such proposed Order. To make clear that the reference is to future orders and not this Order, the Department states this explicitly in § 1500.81(c).

Comment:

One commenter raised a concern with the two-part criteria the Act provides for approval of the Order. Specifically, the commenter thought ''since the assessment is to be based on capacity, the referendum should also be solely based on that criterion. To include an additional requirement that gives every manufacturer, no matter its capacity, an equal vote, not only creates an unrepresentative system, but also creates an incentive structure for companies to modify their corporate structures on the basis of Department regulations rather than market forces.''

Response:

The language in the Order reflects that found in the Act. The Act sets up the two-part voting system. The function of the two-part voting system is a recognition that capacity only should be one consideration. The structure allows small manufacturers to have an equal voice while at the same time providing additional weight to larger manufacturers.

The Department does not think it likely that a business will base its corporate structure decisions on their desire to enhance its participation in the upcoming referendum.

Comment:

One commenter voiced a concern that there is no guidance regarding the process for ''how machine cavities in operation will be counted as machine cavities in operation or even how the Secretary will determine what counts as a machine cavity.'' Another commenter voiced concern that the Department ''will rely on manufacturer's attestations as to their eligibility as well as providing the number of machine cavities in operation. Will the Department rely on attestations from manufacturers, each of which has incentive to inflate their numbers? . . . . And how will the Department count the cavities? Will the Department allow manufacturers to count concrete block molds that could be used in concrete paver machines as cavities? Will the government have to send representatives to every eligible manufacturer to count cavities? Will it rely on uncertain industry data? Given the fundamental importance of the number of operating cavities in determining whether the assessment will be imposed on manufacturers, the absence from the Proposed Order of a proposed method for counting cavities makes it starkly deficient.''

Response:

The Department is sensitive to the concern that additional government audits and inspections can be an encumbrance upon business operations and does not view onsite verification inspections as necessary to determine the total number of machine cavities in operation. Therefore, the Department will rely on the individual manufacturers' expertise and their attestation as to the number of cavities in operation while reserving the right to conduct onsite visits.

The Department will use the definition as provided in both the Act and the Order. Specifically, machine cavities in operation are those machine cavities associated with a block machine that has produced concrete masonry units within the last six months of the date set for determining eligibility and is fully operable and capable of producing concrete masonry units. The Government forms a manufacturer will complete require a signed attestation as to the manufacturer's eligibility as well as to the number of machine cavities in operation. Therefore, a manufacturer may number toward its cavity count total those cavities that have produced concrete masonry units within six months of the referendum, regardless of

whether it is on a machine designed for the sole purpose of making concrete masonry units.

Both the registration form and ballot form are official government forms. Both have the following statement: The making of any false statement or representation on this form, knowing it to be false, is a violation of Title 18, Section 1001 United States Code, which provides for the penalty of a fine of $10,000 or imprisonment of not more than five years or both.

While there is a possibility a manufacturer may falsify information required on an official Government form as suggested by one commenter to ''inflate their numbers'', the Department does not equate the ability to do so with the likelihood it will happen. However, the Department certainly reserves the right to conduct inspections to verify a manufacturer's attestation. The Secretary's authority to inspect, the knowledge of penalties the Secretary has available against a person who willfully violates an Order issued by the Secretary, as well as the future requirement to provide such information and complete evaluation and compliance requirements are strong safeguards against actions of fraud. The Department believes these verification techniques provide the needed dis-incentive to falsify information required on an official Government form.

Comment:

One commenter thought the ''Checkoff program approval process requiring more than 50% approval in companies and cavities means some companies are going to be assessed without their consent, which is fundamentally inconsistent with their family values''.

Response:

An effective Order makes the assessment mandatory (concerning the mandatory nature of the Order, see the previous reply under the heading ''Regional and state-based checkoff programs''). The Act sets out the criteria needed for the Order to become effective. Specifically, the Act provides that the order shall become effective only if the Secretary determines that the order has been approved by a majority of manufacturers voting who also represent a majority of the machine cavities in operation of those manufacturers voting in the referendum. The Department encourages all eligible manufactures to participate in the referendum to make sure ''their voices are heard.'' A majority is anything over 50%, therefore the commenter is correct that if the referendum succeeds and the Order goes into effect, those that were opposed to the Order and those who fail to participate in the referendum still are subject to the Order and the Department will require them to pay assessments. The reverse also is true, if the referendum fails, those that wanted a program are without.

Comment:

One commenter thought it is ''critically important that concrete masonry units be clearly defined, as this definition determines how manufacturers will be assessed and whether they will have a vote in the initial referendum.''

Response:

The Act and the Order use the same language to define these two terms. As noted previously, the definition of concrete masonry products clearly distinguishes a concrete masonry unit from hardscape products such as concrete pavers and segmental retain wall units. In its notice, the Department took the additional step of listing concrete masonry products that it considers to be concrete masonry units (and therefore subject to the assessment). The Department did not receive any comments on this list.

The Act is clear that Board membership is not to be limited to concrete masonry unit manufacturers (*i.e.,* those subject to the assessment). Specifically, the Act provides that '' '[t]he Board shall consist of manufacturers,'' 15 U.S.C. 8704(b)(1)(B)(iii); ''manufacturers'' is defined as ''any person engaged in the manufacturing of commercial concrete masonry products in the United States.'' 15 U.S.C. 8702(12). The Act further provides that ''[t]o ensure fair and equitable representation of the concrete masonry products industry, the composition of the Board shall reflect the geographical distribution of the manufacture of concrete masonry products in the United States, *the types of concrete masonry products manufactured,* and the range in size of manufacturers in the United States.'' 15 U.S.C. 8704(b)(2)(A) (emphasis added). Thus, the Act is unambiguous that all concrete masonry manufacturers are eligible for Board membership and not just concrete masonry unit manufacturers, and the Order reflects that statutory directive.

Reimbursement to the Government and Board Administrative Costs

Comment:

Three commenters were concerned about the reimbursement mandate in the Order. One commenter stated ''the Act calls for the requirement to reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the order, including all referendum costs in connection with the order. There does not seem to be a cap on these expenses.'' ''Rather than sign a blank check,'' another commenter proposed to place ''a 10% cap on government expenses.''

Response:

In addition to being a coordinated program of research, education and promotion to improve, maintain, and develop markets for concrete masonry products, there are several benefits to a Federally run checkoff program. Among others it includes oversight of Board operations, adherence to stated intended purpose, nationwide coordination, and the ability make participation mandatory. The concrete checkoff program authorized by the Act is consistent with other federally-mandated checkoff programs. The Act specifically requires reimbursement from assessments for all expenses incurred by the Secretary in the implementation, administration, and supervision of the order, including all referenda costs incurred in connection with the Order.

All Federal checkoff programs require the affected industry to reimburse the Government for its expenses. The service the Government is providing is specific to an industry and the nature of the checkoff programs allows the Government to provide assistance and oversight, but normally does not use appropriated money to do so. The industry desiring the government assistance and oversight provides full reimbursement, so the benefit and expense to enact such program falls upon the industry and not the taxpayer at large.

Comment

Three commenters believed the proposed Order's allowance for the Board ''to spend 10% of assessments and other funds on the cost of collection of expenses and administrative staff is too high.'' One commented that there is ''no limit to the number of employees'' with a concern that ''no mechanism exists to ensure expenses in the future remain limited and reasonable.''

Response:

The Act allows for initial start-up costs but then establishes a cap on that type of spending. It would seem in the Board's best self-interest to minimize administrative costs and maximize the funding for research, education, and promotion programs. Regardless, beginning in the third year after the establishment of the Board, the Act limits to 10 percent of the assessment and other income received, the Board's expenditures for administration. This excludes payment into escrow and

reimbursement to the Secretary required under § 1500.50(f) and (h). The Act's use of a percentage for a cap on administrative costs is both a limiting factor and what Congress considered reasonable.

Executive Order 12866

This rulemaking is not a significant regulatory action under Executive Order 12866.

List of Subjects in 15 CFR Part 1500

Administration practice and procedure, Assessments, Business and industry, Checkoff program, Concrete masonry products, Confidential business information, Education, Non-agricultural commodities, Promotion activities, Reporting and recordkeeping requirements, Research.

For the reasons stated in the preamble, the Under-Secretary for Economic Affairs amends 15 CFR part 1500 as set forth below:

PART 1500—CONCRETE MASONRY PRODUCTS RESEARCH, EDUCATION, AND PROMOTION

■ 1. The authority citation for part 1500 continues to read as follows:

Authority: 15 U.S.C. 8701–8717.

■ 2. Add subpart A to read as follows:

Subpart A—Concrete Masonry Products Research, Education, and Promotion Order

Sec.

Subpart A—Concrete Masonry Products Research, Education, and Promotion Order

Definitions

§ 1500.0 Order.

Order means this subpart A, Concrete Masonry Products Research, Education, and Promotion Order.

§ 1500.1 Act.

Act means the Concrete Masonry Products Research, Education, and Promotion Act of 2018 (15 U.S.C. 8701 *et seq.;* Pub. L. 115–254, section 1301, 132 Stat. 3469–3485 (2018)), and any amendments thereto.

§ 1500.2 Block machine.

Block machine means a piece of equipment that utilizes vibration and compaction to form concrete masonry products.

§ 1500.3 Board.

Board means the ''Concrete Masonry Products Board'' established under § 1500.40 of this Order.

§ 1500.4 Cavity.

Cavity means the open space in the mold of a block machine capable of forming a single concrete masonry unit having nominal plan dimensions of 8 inches by 16 inches.

§ 1500.5 Concrete masonry products.

Concrete masonry products means a broader class of products, including concrete masonry units as well as hardscape products such as concrete pavers and segmental retaining wall units, manufactured on a block machine using dry-cast concrete.

§ 1500.6 Concrete masonry unit.

Concrete masonry unit means a concrete masonry product that is a manmade masonry unit having an actual width of 3 inches or greater and manufactured from dry-cast concrete using a block machine. Such term includes concrete block and related concrete units used in masonry applications.

§ 1500.7 Conflict of interest.

Conflict of interest means with respect to a member or employee of the Board, a situation in which such member or employee has a direct or indirect financial or other interest in a person that performs a service for, or enters into a contract with, for anything of economic value.

§ 1500.8 Department.

Department means the United States Department of Commerce.

§ 1500.9 Dry-cast concrete.

Dry-cast concrete means a composite material that is composed essentially of aggregates embedded in a binding medium composed of a mixture of cementitious materials (including hydraulic cement, pozzolans, or other cementitious materials) and water of such a consistency to maintain its shape after forming in a block machine.

§ 1500.10 Education.

Education means programs that will educate or communicate the benefits of concrete masonry products in safe and environmentally sustainable development, advancements in concrete masonry product technology and development, and other information and programs designed to generate increased demand for commercial, residential, multi-family, and institutional projects using concrete masonry products and to generally enhance the image of concrete masonry products.

§ 1500.11 Geographic regions.

Geographic Regions means the groupings of states as delineated in this Order (at § 1500.40(c)), for the purpose of supporting research, education, and promotion plans and projects.

§ 1500.12 Machine cavities.

Machine cavities means the cavities with which a block machine could be equipped.

§ 1500.13 Machine cavities in operation.

Machine cavities in operation means those machine cavities associated with a block machine that have produced concrete masonry units within the last six months of the date set for determining eligibility and is fully

operable and capable of producing concrete masonry units.

§ 1500.14 Manufacturer.

Manufacturer means any person engaged in the manufacturing of commercial concrete masonry products in the United States.

§ 1500.15 Masonry unit.

Masonry unit means a noncombustible building product intended to be laid by hand or joined using mortar, grout, surface bonding, post-tensioning or some combination of these methods.

§ 1500.16 [Reserved]

§ 1500.17 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative or any other entity.

§ 1500.18 Promotion.

Promotion means any action, including paid advertising, to advance the image and desirability of concrete masonry products with the express intent of improving the competitive position and stimulating sales of concrete masonry products in the marketplace.

§ 1500.19 Research.

Research means studies testing the effectiveness of market development and promotion efforts, studies relating to the improvement of concrete masonry products and new product development, and studies documenting the performance of concrete masonry.

§ 1500.20 Secretary.

Secretary means the Secretary of the United States Department of Commerce.

§ 1500.21 United States.

United States means the several States and the District of Columbia.

Concrete Masonry Products Board

§ 1500.40 Establishment and membership.

(a) The Board is hereby established to carry out a program of generic promotion, research, and education regarding concrete masonry products. The Board shall consist of manufacturers and of not fewer than 15 and not more than 25 members appointed by the Secretary, from nominations submitted as set forth in § 1500.41. No employee of an industry trade organization exempt from tax under paragraph (3) or (6) of section 501(c) of the Internal Revenue Code of 1986 representing the concrete masonry industry or related industries shall serve as a member of the Board and no member of the Board may serve concurrently as an officer of the board of directors of a national concrete masonry products industry trade association.

(b) The initial Board and all subsequent Boards, unless modified by the Board as provided in paragraph (d) of this section, shall be subject to the following:

(1) To ensure fair and equitable representation of the concrete masonry products industry, the composition of the Board shall reflect the geographical distribution of the manufacture of concrete masonry products in the United States, the types of concrete masonry products manufactured, and the range in size of manufacturers in the United States.

(2) No company or its affiliates shall have more than two members on the Board.

(c) To the extent possible, dependent on the nominees submitted, the Secretary will strive to appoint at least two members from each region. Similarly, the Secretary will strive to appoint at least one member from each of the following districts:

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Table 1 to paragraph (c)

Region	District	States
1	1	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont
	2	New York
	3	Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, and West Virginia
2	4	North Carolina, South Carolina, and Virginia
	5	Alabama, Georgia, Mississippi, and Tennessee
	6	Florida
3	7	Indiana, Kentucky, and Ohio
	8	Illinois, Michigan, and Wisconsin
	9	Iowa, Minnesota, Nebraska, North Dakota, and South Dakota
4	10	Arkansas, Kansas, Missouri, and Oklahoma
	11	Louisiana, and Texas
	12	Arizona, and New Mexico
5	13	Colorado, Utah, and Wyoming
	14	Alaska, Idaho, Montana, Oregon, and Washington
	15	California, Hawaii, and Nevada

BILLING CODE 3510–20–C

(d) Three years after the assessment of concrete masonry units commences pursuant to implementation of this Order, and at the end of each three-year period thereafter, the Board, subject to the review and approval of the Secretary, shall, if warranted, recommend to the Secretary the reapportionment of the Board membership to reflect changes in the geographical distribution of the manufacture of concrete masonry products and the types of concrete masonry products manufactured. Additionally, at any time, the Board may make recommendations to the Secretary to modify the composition of the regions and districts set forth in paragraph (c) of this section.

§ 1500.41 Nominations and appointments.

(a) For the initial Board, nominations shall be made and submitted to the Secretary by manufacturers. The Secretary shall consider the nominations submitted and other manufacturers for appointment, as the Secretary may deem appropriate. The Secretary shall appoint the members and alternate members of the initial Board.

(b) From the nominations, the Secretary shall appoint the 15–25 members of the Board and 6 alternate members of the Board within a

reasonable time after receiving nominations. If a voting member vacates the appointment, the Secretary will appoint one of the alternate members to fill the unexpired term. The Secretary will provide the Board an opportunity to offer a nominee as successor to fill the term of the alternate member. In any case in which the Board fails to submit nominations for any open position, the Secretary shall appoint a member qualifying for the position under the criteria set forth in § 1500.40.

(c) As terms expire or vacancies occur among members and alternate members, nominations and those interested in being considered for Board membership, including self-nominations, may submit such nominations to the Board. For each expired or vacant position, the Board will evaluate the nominations received, verify the willingness of nominees to serve, and then will submit to the Secretary at least three nominees for each such position. The Secretary may also receive nominations and may forward them to the Board for their consideration. The Secretary is not bound by the recommendations of the Board; in selecting members, the Secretary will consider the recommendations of the Board, individual expertise, distribution of appointments, and more expansive input from sources available to the Secretary. For the initial Board, from the list of nominees not selected for appointment, the Secretary will choose and appoint six alternate members for the Board. Alternate members will be non-voting members of the Board.

§ 1500.42 Term of office.

(a) Board members and any alternates will serve for a term of three years, except for the initial members as described below. Board members and any alternates will be able to serve a maximum of two consecutive three-year terms and may serve additional terms, of up to two consecutive three-year terms, after rotating off the Board. When the Board is first established, the initial members will be assigned initial terms of two, three and four years. Initial terms will be staggered to assure continuity. Each term of office will end on December 31, with new terms of office beginning on January 1. Members serving the initial terms of two and three years will be eligible to serve a second term of three years.

(b) Thereafter, each of the positions will carry a full three-year term. Notwithstanding the limitations on consecutive terms, a Board member or alternate Board member may continue to serve until a successor is appointed by the Secretary.

§ 1500.43 Vacancies.

Should any Board member position become vacant, an alternate will be appointed by the Secretary for the remainder of the term. Successors to fill the unexpired terms of the former alternate member shall be appointed in the manner specified in § 1500.41.

§ 1500.44 Disqualification.

(a) In the event that any Board member or alternate Board member who was appointed as a manufacturer ceases to qualify as a manufacturer, such Board member or alternate Board member shall be disqualified from serving on the Board. The replacement may be at the Secretary's initiative or the Board may recommend to the Secretary that the member be removed.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office.

(c) All members serve at the pleasure of the Secretary.

§ 1500.45 Procedure.

(a) The Board will meet at least annually. A Board meeting will be conducted only when a quorum is present. A majority of the Board members will constitute a quorum. If participation by telephone or other means is permitted, members participating by such means shall count as present in determining quorum or other voting requirements set forth in this section.

(b) At the start of each fiscal period, the Board will select a Chair, Vice-Chair, Secretary-Treasurer and other officers as appropriate who will serve in leadership roles throughout that period.

(c) The Board will provide members and manufacturers a minimum of 14 days advance notice of all Board meetings.

(d) Each Board member will be entitled to one vote on any matter put to vote, and the motion will carry if supported by one vote more than 50 percent of the total votes represented by the Board members participating, with the exception of the affirmative vote of two-thirds of voting members required to change the assessment rate as specified in § 1500.51(c).

(e) The Board may form committees as necessary. Committees may consist of individuals other than Board members. Committee members shall serve without compensation.

(f) When the Board Chair determines that a vote outside a convened Board meeting is necessary, such vote may take place via electronic means only if members are given fourteen days prior notice, and if a majority of the voting Board members participate prior to the established deadline. Any action so taken shall have the same force and effect as though such action had been taken at a regularly convened meeting of the Board.

(g) All votes shall be recorded in Board minutes.

(h) There shall be no voting by proxy.

(i) Board members shall each have one vote. Alternate members shall not vote. The Chair and all Board officers shall be elected from voting members of the Board.

(j) The organization of the Board and the procedures for the conducting of meetings of the Board shall be in accordance with its bylaws, which shall be established by the Board and approved by the Secretary.

(k) Meetings of the Board and committees may be conducted by electronic communications, provided that each member and committee member, if such committee member is not a member of the Board, is given prior written notice of the meeting and has the opportunity to be present either physically or by electronic connection.

§ 1500.46 Compensation and reimbursement.

(a) Members and any alternates of the Board shall serve without compensation.

(b) If approved by the Board, members or alternates shall be reimbursed for reasonable travel expenses, which may include per diem allowance or actual subsistence incurred while away from their homes or regular places of business in the performance of services for the Board.

§ 1500.47 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer this Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board;

(c) To make such rules as may be necessary to administer this Order, including activities to be carried out under this Order;

(d) To meet, organize, and select from among the members of the Board a Chair, Vice Chair, Secretary-Treasurer and other officers, committees, and subcommittees, and to vest in such committees and subcommittees such responsibilities and authorities as the Board determines to be appropriate;

(e) To establish regional committees to administer regional initiatives;

(f) To recommend to the Secretary modifications to the geographical regions as described in § 1500.40(c);

(g) To establish working committees of persons other than Board members;

(h) To employ persons, other than the members, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons;

(i) To prepare and submit for the approval of the Secretary a budget as described in § 1500.50(a);

(j) To borrow funds necessary for the startup expenses of this Order;

(k) To develop and carry out generic research, education, and promotion programs and projects relating to concrete masonry products, and to pay the costs of such programs and projects with assessments collected under § 1500.51 and other income of the Board as provided under §§ 1500.50(j) and 1500.62;

(l) To enter into contracts or agreements which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, education, and promotion relating to concrete masonry products, including with manufacturer associations or other entities as considered appropriate by the Secretary;

(m) To develop programs and projects, and enter into contracts or agreements related thereto, which must be approved by the Secretary before becoming effective, targeted specifically toward the Geographic Regions described in § 1500.40(c) to be recommended by the relevant regional committees for marketing and research projects to benefit manufacturers in such Geographic Regions pursuant to the goals of any programs or projects as set forth under this Order. The contracts or agreements related to such programs and projects as described in this § 1500.46(m) shall be subject to the requirements of all contracts or agreements described in § 1500.46(l);

(n) To keep minutes, books, and records that reflect the actions and transactions of the Board, and promptly report minutes of each Board meeting to the Secretary;

(o) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe and to make the records available to the Secretary for inspection and audit; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(p) At the end of each fiscal year and at such other times as the Secretary may request, to have the books and records audited by an independent auditor and submit a report of the audit directly to the Secretary;

(q) To give the Secretary the same notice of meetings of the Board and committees as is given to members, including committee members if committee members are not members of the Board, in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Board and all committees to the Secretary;

(r) To furnish to the Secretary any information or records that the Secretary may request;

(s) To receive, investigate, and report to the Secretary all complaints of violations of this Order;

(t) To recommend to the Secretary such amendments to this Order as the Board considers appropriate;

(u) To recommend adjustments to the assessments as provided in this Order;

(v) To notify manufacturers of all Board meetings through press releases or other means;

(w) To invest assessments collected under this Order in accordance with § 1500.50; and

(x) To periodically prepare and make available to the public and manufacturers reports of its activities and, at least once each fiscal period, to make public an accounting of funds received and expended.

§ 1500.48 Prohibited activities.

(a) The Board shall not engage in any program or project to, nor shall any funds received by the Board under the Act be used to:

(1) Influence legislation, elections, or governmental action;

(2) Engage in an action that would be a conflict of interest;

(3) Engage in advertising that is false or misleading;

(4) Engage in any research, education, or promotion that would be disparaging to other construction materials; or

(5) Engage in any promotion or project that would benefit any individual manufacturer.

(b) Paragraph (a) of this section does not preclude:

(1) The development and recommendation of amendments to the Order;

(2) The communication to appropriate government officials of information relating to the conduct, implementation, or results of research, education, and promotion activities under the Order except communications described in paragraph (a)(1) of this section; or

(3) Any lawful action designed to market concrete masonry products directly to a foreign government or political subdivision of a foreign government.

Expenses and Assessments

§ 1500.50 Budget and expenses.

(a) Prior to the beginning of each fiscal year, and during the fiscal year as may be necessary, the Board shall prepare and submit to the Secretary for approval a budget for the fiscal year covering its anticipated expenses and disbursements in administering this Order, including the probable cost of each promotion, research, and education activity proposed to be developed or carried out by the Board and a section that annotates and explains any shortcomings, overruns, and shift of funds from the previous year's budget. Such budget shall be deemed approved if the Secretary fails to approve or reject the budget within 60 days of receipt, unless the Secretary proposes to the Board and to Congress, reasonable justification for the delay and provides a reasonable date by which approval or disapproval will be made. The Department may provide such justification in any written format.

(b) In addition to paragraph (a) of this section, each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project, with a comparative for the preceding year—annotating the success and explaining the shortcomings of the preceding year's programs, plans, and projects

(2) A summary of anticipated revenue, with comparative data for at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(c) Each budget shall provide adequate funds to defray its proposed expenditures.

(d) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program or project to another. A shift of funds from one approved category to another, and not exceeding 10% of the funds in either category, which does not cause an increase in the Board's approved budget and which is

consistent with governing bylaws need not have prior approval by the Secretary. If the Secretary fails to approve or reject a budget, or an amendment or addition to an approved budget, within 60 days of receipt, such budget shall be deemed approved, unless the Secretary provides to the Board and to Congress, in writing, reasonable justification for the delay and provides a reasonable date by which approval or disapproval will be made. The Department may provide such justification in any written format.

(e) The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this Order. Such expenses shall be paid from funds received by the Board.

(f) Limitations on obligation of funds:

(1) In each fiscal year, through fiscal year 2030, the Board may not obligate an amount greater than the sum of—

(i) 73 percent of the amount of assessments estimated to be collected under § 1500.51 in such fiscal year);

(ii) 73 percent of the amount of assessments actually collected under § 1500.51 in the most recent fiscal year for which an audit report has been submitted as of the beginning of the fiscal year for which the amount that may be obligated is being determined, less the estimate made pursuant to paragraph (e)(1) of this section for such most recent fiscal year; and

(iii) Amounts permitted in preceding fiscal years to be obligated that have not been obligated.

(iv) For fiscal years 9 and 10 (ending September 2028 and 2029) there is a special rule for estimates. Specifically, the amounts estimated to be collected shall be 62 percent of the amount of assessments actually collected in the most recent fiscal year for which an audit report has been submitted as of the beginning of the fiscal year for which the amount be obligated is being determined.

(2) Assessments collected in excess of the amount permitted to be obligated in a fiscal year shall be deposited in an escrow account until the end of the 11th fiscal year or September 2030.

(3) Prior to the end of the 11th fiscal year or September 30, 2030, the Board may not obligate, expend, or borrow against amounts deposited in the escrow account. Any interest earned on such amounts shall be deposited in the escrow account and shall be unavailable for obligation until the end of the 11th fiscal year or September 30, 2030.

(g) With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays.

(h) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration and supervision of this Order, including all referendum costs in connection with this Order.

(i) Following the third fiscal year of operation of the Board, the total cost of collection of expenses and administrative staff incurred by the Board during any fiscal year shall not exceed 10 percent of the projected total assessments to be collected and other income received by the Board for that fiscal year after any fees owed to the Department are paid. Reimbursements to the Secretary required under paragraph (g) of this section are excluded from this limitation on spending.

(j) Pending disbursement of assessments and all other revenue under a budget approved by the Secretary, the Board may invest assessments and all other revenues collected under this section in:

(1) Obligations of the United States or any agency of the United States;

(2) General obligations of any state or any political subdivision of a state;

(3) Interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve System; or

(4) Obligations fully guaranteed as to principal interest by the United States.

(k) Investment income and revenue earned under paragraph (i) of this section are earnings obtained from assessments that are subject to budget approval under paragraph (a) of this section.

§ 1500.51 Assessments.

(a) The collection of assessments on concrete masonry units will be the responsibility of the manufacturer who sells the concrete masonry units. There shall be an assessment on the first sale of concrete masonry units only and not on subsequent sales of concrete masonry units already assessed. The manufacturer will be required to collect and remit its individual assessments no less than quarterly. Manufacturers shall identify the total amount due in assessments on all sales receipts, invoices or other commercial documents of sale as a result of the sale of concrete masonry units. Within 180 days of their initial meeting, the Board will provide for review and approval by the Secretary a proposed evaluation and compliance program and its plan to evaluate program effectiveness and to verify compliance with the Act. The evaluation and compliance program will provide the method and metrics that will help determine program effectiveness and will outline the way the Board will receive assessments, how they will verify compliance, determine the best method to track sales, and how to document all actions including the process by which the Board will use to ensure it meets or exceeds the legislatively-mandated disbursement of received assessments.

(b) Such assessments shall be levied at a rate of $0.01 per concrete masonry unit sold by a manufacturer. The Board may make assessments effective as of the effective date of this Order. Submission of funds may be made to the Board within 60 days of the end of the first quarter after the Board is established; thereafter submission of funds will be to the board within 60 days of the end of each quarter.

(c) At any time following the conduct of the initial referendum conducted pursuant to this Order, the assessment rate will be reviewed by the Board and, upon the affirmative vote of two-thirds of voting members of the Board, may be modified; provided that the assessment rate may be raised to a maximum of $0.05 cents per unit, that only one increase may be implemented in any one-year period, and each individual increase may not exceed $0.01

(d) Not less than 50 percent of the assessments (less administration expenses) paid by a manufacturer shall be used to support research, education, and promotion programs and projects in support of the Geographic Region of the manufacturer.

(e) All assessment payments and reports will be submitted to the Board quarterly. All quarterly payments are to be received no later than 60 days after the conclusion of each quarter. A late payment charge shall be imposed on any manufacturer who fails to remit to the Board the total amount for which any such manufacturer is liable on or before the due date established by the Board. In addition to the late payment charge, an interest charge shall be imposed on the outstanding amount for which the manufacturer is liable. The rate of interest and late payment charges shall be specified by the Secretary.

(f) Manufacturers failing to remit total assessments due in a timely manner may also be subject to actions under Federal debt collection procedures.

(g) The Board may authorize other organizations to collect assessments on

its behalf with the approval of the Secretary.

(h) The Board shall provide manufacturers submitting assessments under this Order with the opportunity to apply for rebates on assessments remitted to the Board for concrete masonry units not covered by this Order and for assessments remitted to the Board for concrete masonry units sold to a purchaser that subsequently failed to remit payment due to bankruptcy, bad debt or other reasons causing the money intended to be collected from such sale to be uncollectible. Those requesting rebates in such circumstances must provide all necessary documentation as the Board shall determine.

§ 1500.60 Programs and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program or project authorized under this Order. Such programs or projects shall be consistent with the purpose of the Act (*see* 15 U.S.C. 8701) and provide for:

(1) The establishment of annual research, education, and promotion objectives and metrics for each fiscal year. Objectives and performance metrics should consider and where possible reflect those listed in 15 U.S.C. 8716 (Study and report by the Government Accounting Office).

(2) The establishment, issuance, effectuation and administration of appropriate programs for research, education, and promotion with respect to concrete masonry products; and

(3) The establishment and conduct of research with respect to the image, desirability, use, marketability, quality or production of concrete masonry products, to the end that the marketing and use of concrete masonry products may be encouraged, expanded, improved or made more acceptable and to advance the image, desirability or quality of concrete masonry product.

(b) No program or project shall be implemented prior to its approval by the Secretary. Once a program or project is so approved, the Board shall take appropriate steps to implement it. If the Secretary fails to approve or reject a contract or agreement for a program or project within 60 days of receipt, the contract or agreement shall be deemed approved, unless the Secretary provides to the Board and to Congress, in writing, reasonable justification for the delay and provides a reasonable date by which approval or disapproval will be made. The Department may provide such justification in any written format. Any such contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program or project together with a budget or budgets that specifies the cost to be incurred to carry out the program or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically;

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor; and

(5) The contract or agreement shall become effective on the approval of the Secretary.

(c) Each program or project implemented under this Order shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of research, education, or promotion. If it is found by the Board that any such program or project does not contribute to an effective program of research, education, or promotion, then the Board shall, with the approval of the Secretary, terminate such program or project.

(d) Any educational or promotional activity undertaken with funds provided by the Board shall include a statement that such activities were supported in whole or in part by the Board.

(e) Every 2 years the Board shall prepare and make publicly available a comprehensive and detailed report that includes an identification and description of all programs and projects undertaken by the Board during the previous 2 years as well as those planned for the subsequent 2 years and detail the allocation or planned allocation of Board resources for each such program or project. Such report shall also include:

(1) The overall financial condition of the Board;

(2) A summary of the amounts obligated or expended during the 2 preceding fiscal years; and

(3) A description of the extent to which the objectives of the Board were met according to the metrics required under § 1500.50.

§ 1500.61 Independent evaluation.

The Board shall authorize and fund an independent evaluation of the effectiveness of this Order and other programs conducted by the Board beginning five years after October 5, 2018, and every 3 years thereafter. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

§ 1500.62 Patents, copyrights, trademarks, information, publications, and product formulations.

Ownership and allocation of rights to patents, copyrights, inventions, or publications, developed through the use of non-Federal funds remitted to the Board under the Order shall be determined by written agreement between the Board and the party(ies) receiving funds for the development of such inventions, patents, copyrights or publications.

Reports, Books, and Records

§ 1500.70 Reports.

(a) Each manufacturer subject to this Order may be required to provide to the Board periodically such information as may be required by the Board, with the approval of the Secretary, which may include but not be limited to the following:

(1) Number and type of concrete masonry units manufactured;

(2) Number and type of concrete masonry units on which an assessment was paid;

(3) Name and address of the manufacturer; and

(4) Date assessment was paid on each concrete masonry unit sold.

(b) All reports required under this section are due to the Board 60 days after the end of each quarter.

(c) All reports or information submitted pursuant to this paragraph shall be subject to the confidentiality restrictions in § 1500.72.

§ 1500.71 Books and records.

Each manufacturer subject to this Order shall maintain and make available for inspection by the Secretary such books and records as are necessary to carry out the provisions of this Order, including such records as are necessary to verify any reports required. Such records shall be retained for at least 7 years beyond the fiscal period of their applicability.

§ 1500.72 Confidential treatment.

(a) Trade secrets and commercial or financial information that is privileged or confidential obtained from books, records, or reports under the Act, this Order shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former

officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members or manufacturers. Only those persons having a specific need for such information to effectively administer the provisions of this Order shall have access to such information. Such information may be disclosed only if the Secretary considers the information relevant; and the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Secretary or to which the Secretary or any officer of the Department is a party. Any officer, employee, or agent of the Department of Commerce or any officer, employee, or agent of the Board who willfully violates this paragraph shall be fined not more than $1,000 and imprisoned for not more than 1 year, or both. Nothing in this section shall be deemed to prohibit:

(1) The issuance of general statements based upon the reports of the number of persons subject to this Order or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(2) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this Order, together with a statement of the particular provisions of this Order violated by such person.

(b) For any officer, employee, or agent of the Department of Commerce, these provisions are consistent with and do not supersede, conflict with, or otherwise alter any obligations, rights, or liabilities created by existing statute or Executive order relating to classified information, communications to Congress, the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive Orders and statutory provisions are incorporated into this Order and are controlling.

Miscellaneous

§ 1500.80 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1500.81 Referenda.

(a) A referendum will be held to determine whether manufacturers favor enactment of this Order. A manufacturer shall be considered eligible to vote if the manufacturer has manufactured concrete masonry products during a period of at least 180 days prior to the first day of the period during which voting in the referendum will occur. For the initial referendum, an eligible person is a manufacturer of concrete units that is subject to the initial rate of assessment in § 1500.51. Each manufacturer eligible to vote in the referendum shall be entitled to one vote. This Order became effective after approval by a majority of manufacturers voting who also represent a majority of the machine cavities in operation of those manufacturers voting in the referendum.

(b) After the initial referendum, the Secretary shall conduct a referendum upon the request of the Board, or effective beginning November 30, 2026, and at 5-year intervals thereafter, by petition from not less than 25% of manufacturers eligible to vote. Each manufacturer eligible to vote in subsequent referenda shall be entitled to one vote. The Order will remain in effect if approved by a majority of manufactures voting who also represent a majority of the machine cavities in operation of those manufacturers voting in the referendum.

(c) For any new proposed order, voter eligibility will be based on the scope of such proposed order. A future proposed Order becomes effective if approved by a majority of manufacturers voting and any other criteria established by the Secretary based on the scope of such future proposed order.

§ 1500.82 Suspension or termination.

(a) The Secretary shall suspend or terminate an order or a provision of an order if the Secretary finds that an order or provision of an order obstructs or does not tend to effectuate the purpose of the Act, or if the Secretary determines that the order or a provision of an order is not favored by a majority of all votes cast in the referendum as provided in § 1500.81. If the Secretary suspends or terminates a provision of an order, the order remains in effect minus the suspended or terminated provision.

(b) If, as a result of a referendum conducted under § 1500.81 of this Order, the Secretary determines that the Order is not approved, the Secretary shall:

(1) Not later than 180 days after making the determination, suspend or terminate collection of assessments under this Order; and

(2) As soon as practical, suspend or terminate activities under this order in an orderly manner.

§ 1500.83 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this Order, or the issuance of any amendment, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen, or which may thereafter arise in connection with any provision of this Order;

(b) Release or extinguish any violation of this Order; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

§ 1500.84 Notice and advance registration.

At least 30 days before a referendum is to be conducted under this Order, the Secretary shall notify all manufacturers of the period during which the referendum will occur through publication in the **Federal Register**. The notice shall explain any registration and voting procedures. A manufacturer who chooses to vote in any referendum conducted under this Order shall register with the Secretary prior to the voting period.

§ 1500.85 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, when they exercise their discretionary duties of their office, in good faith, while acting within the scope of their authority, to any person for errors in judgment, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct

§ 1500.86 Separability.

If any provision of this Order is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this Order or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1500.87 Amendments.

The Secretary may, from time to time, amend an Order. Amendments to this Order may be proposed from time to time by the Board or by any interested person affected by the provisions of the Act, including the Secretary. The provisions of the Act applicable to an order shall be applicable to any amendment to this Order.

§ 1500.88 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* is OMB control number 0605–0028.

Dated: August 20, 2021.

Kenneth White,

Senior Policy Analyst, Under Secretary for Economic Affairs.

[FR Doc. 2021–18352 Filed 9–14–21; 8:45 am]

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Part III

Department of Labor

Employee Benefits Security Administration

Department of the Treasury

Internal Revenue Service

Pension Benefit Guaranty Corporation

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29 CFR Parts 2520 and 4065

Proposed Revision of Annual Information Return/Reports; Proposed Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2520

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4065

RIN 1210–AB97

Proposed Revision of Annual Information Return/Reports

AGENCY: Employee Benefits Security Administration, Labor; Internal Revenue Service, Treasury; Pension Benefit Guaranty Corporation.

ACTION: Notice of proposed forms revisions.

SUMMARY: This document contains proposed changes to the Form 5500 Annual Return/Report forms filed for employee pension and welfare benefit plans under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (Code). The proposed form revisions primarily relate to statutory amendments to ERISA and the Code enacted as part of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act). The Department of Labor (DOL), the Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC) (collectively ''Agencies'') are also proposing certain additional changes intended to improve reporting on multiemployer defined benefit pension plan funding, update Form 5500 financial reporting to make the financial information collected on the Form 5500 more useful and usable, enhance the reporting of certain tax qualification and other compliance information by retirement plans, and, transfer to the DOL Form M–1 (Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)) (Form M–1) participating employer information for multiple employer welfare arrangements that are required to file the Form M–1. The proposed revisions would affect employee pension and welfare benefit plans, plan sponsors, administrators, and service providers to plans subject to annual reporting requirements under ERISA and the Code.

DATES: Written comments must be received by the Department of Labor on or before November 1, 2021.

ADDRESSES: You may submit written comments, identified by RIN 1210–AB97, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. To facilitate receipt and processing of comments, the Agencies encourage interested parties to submit their comments electronically.

Mail: Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210, Attention: Proposed Form 5500 Revisions RIN 1210–AB97.

Instructions: All submissions must include the agency name and Regulatory Identifier Number (RIN) for this rulemaking. The Agencies will share any comment submitted to one of the Agencies individually with the other Agencies. To avoid unnecessary duplication of effort, the DOL also will treat public comments submitted in response to this Notice of Proposed Forms Revisions as public comments on the Notice of Proposed Rulemaking to the extent they include information relevant to the proposed regulatory amendments. If you submit comments electronically, do not submit paper copies. Comments will be available to the public, without charge, online at: *http://www.regulations.gov* and *http://www.dol.gov/agencies/ebsa* and at the Public Disclosure Room, Employee Benefits Security Administration, Suite N–1513, 200 Constitution Ave. NW, Washington, DC 20210.

Warning: Do not include any personally identifiable or confidential business information that you do not want publicly disclosed. Comments are public records posted on the internet as received and can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: Janet Song or Colleen Brisport Sequeda, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693–8500 for questions related to reporting requirements under Title I of ERISA. For information related to the IRS changes and questions under the Internal Revenue Code, contact Cathy Greenwood, Employee Plans Program Management Office, Tax Exempt and Government Entities, (470) 639–2503. For information related to PBGC changes, including proposed changes to the actuarial schedules, contact Karen B. Levin, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, (202) 229–3559.

Customer service information: Individuals interested in obtaining general information from the DOL concerning Title I of ERISA may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the DOL's website (*www.dol.gov/agencies/ebsa*).

SUPPLEMENTARY INFORMATION:

I. Overview of the Proposal

A. Background of Form 5500 Annual Return/Report of Employee Benefit Plan

Sections 101 and 104 of Title I and section 4065 of Title IV of the Employee Retirement Income Security Act of 1974 (ERISA) and sections 6057(b), 6058(a), and 6059(a) of the Internal Revenue Code of 1986 (Code), and related regulations, impose annual reporting and filing obligations on pension and welfare benefit plans, as well as on certain other entities. Plan administrators, employers, and others generally satisfy these annual reporting obligations by filing the Form 5500, Annual Return/Report of Employee Benefit Plan (Form 5500), or Form 5500–SF, Short Form Annual Return/Report of Small Employee Benefit Plan (Form 5500–SF) (together ''Form 5500 Annual Return/Report'').[1] Specifically, filing of the Form 5500 or the Form 5500–SF, as applicable, with any required schedules and attachments in accordance with the instructions and related regulations, constitutes compliance with the applicable annual reporting requirements under Title I of ERISA and the Department's implementing regulations.[2] Filing of a

[1] Certain one-participant plans and foreign plans that are not subject to the requirements of section 104(a) of ERISA are required to file Form 5500–EZ, Annual Return of One Participant (Owners/Partners and Their Spouses) Retirement Plan or a Foreign Plan. Beginning with 2020 forms filed on or after January 1, 2021, the Form 5500–EZ is required to be filed electronically through the same system as the Form 5500—the Form 5500 Electronic Filing Acceptance System (EFAST2). From 2009 to 2019, such plans had been permitted to file the Form 5500–SF electronically in lieu of filing the Form 5500–EZ on paper with the IRS. *See* instructions for 2020 Form 5500–EZ and Form 5500–SF.

[2] ERISA section 103 broadly sets out annual reporting requirements for employee benefit plans. The Form 5500 Annual Return/Report and the DOL's implementing regulations generally are promulgated under the ERISA provisions authorizing limited exemptions to these requirements and simplified reporting and disclosure for welfare plans under ERISA section 104(a)(3), simplified annual reports under ERISA section 104(a)(2)(A) for pension plans that cover fewer than 100 participants, and alternative methods of compliance for all pension plans under ERISA section 110. The forms, instructions, and related regulations are also promulgated under the

Form 5500 or Form 5500–SF, together with the required attachments and schedules in accordance with the instructions, by plan administrators, employers, and certain other entities also satisfies the annual filing and reporting requirements under Code sections 6057(b), 6058(a), and 6059(a). Filing the Form 5500 Annual Return/Report will also satisfy an applicable plan administrator's annual reporting obligation under section 4065 of Title IV of ERISA.

The Form 5500 Annual Return/Report serves as the principal source of information and data available to the Agencies concerning the operations, funding, and investments of approximately 843,000 pension and welfare benefit plans that file.[3] ERISA plans cover roughly 154 million workers, retirees, and dependents of private sector pension and welfare plans[4] with estimated assets of $12.2 trillion.[5] Accordingly, the Form 5500 Annual Return/Report is essential to each Agency's enforcement, research, and policy formulation programs, as well for the regulated community, which makes increasing use of the information as more capabilities develop to interact with the data electronically. The data is also an important source of information and data for use by other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies. The Form 5500 Annual Return/Report also serves as a primary means by which the operations of plans can be monitored by participating employers in multiple employer plans and other group arrangements, plan participants and beneficiaries, and by the general public.

The last time the Agencies implemented significant changes to the forms and schedules was for the 2009 form year, in conjunction with the move to mandatory electronic filing and a related update to the ERISA Filing Acceptance System (EFAST2).[6] Those changes were proposed in 2006, 71 FR 41615 (Jul. 21, 2006), and finalized in 2007, effective for the 2009 form series. 72 FR 64731 (Nov. 16, 2007). Other discrete changes that have been made to the Form 5500 Annual Return/Report over those years were generally set forth annually in the ''Changes to Note'' section in the instructions, some of which have involved targeted rulemaking activity to implement reporting changes required by law.[7] The Agencies most recent significant initiative with respect to the Form 5500 was the publication of a proposal to modernize the forms and instructions in July 2016. 81 FR 47534 (July 16, 2016) (Tri-Agency Notice of Proposed Forms Revisions) and 81 FR 47496 (July 16, 2016) (DOL Notice of Proposed Rulemaking) (together the 2016 Modernization Proposal). The 2016 Modernization Proposal ultimately was not adopted as final changes to the forms, instructions, and regulations, although a small number of changes that were included in the 2016 proposal have been finalized, as set forth in the ''Changes to Note'' Section in the instructions to the Form 5500 Annual Return/Report for the years in which the changes were made.

B. Recent Legislative Changes Supporting Proposed Annual Reporting Improvements

The SECURE Act,[8] which overall was designed to expand and preserve workers' retirement savings, is the most significant legislation impacting ERISA and Code provisions pertaining to retirement plans since the Pension Protection Act of 2006. Among other things, the SECURE Act directed the Secretary of Labor and the Secretary of Treasury (together ''Secretaries'') to develop a new aggregate annual reporting option for certain groups of retirement plans and included other statutory amendments that directly impact annual reporting requirements for multiple-employer pension plans (MEPs). In relevant part, the SECURE Act's expansion of MEPs and direction for the Secretaries to establish a consolidated reporting option for defined contribution pension plans that share certain key characteristics should help expand retirement coverage by making it easier for record keepers and other financial services providers to offer attractive retirement plan alternatives and for employers, especially small ones, to pick from among a broader array of alternatives what works best for them and their employees.

Section 202 of the SECURE Act provides that the Secretaries, shall, in cooperation, modify the Form 5500 Annual Return/Report so that all members of a group of defined contribution individual account plans described in section 202 may file a single aggregated annual return/report satisfying the requirements of both section 6058 of the Code and section 104 of ERISA. The SECURE Act further provides that, in developing the consolidated return/report, the Secretaries may require any information regarding each plan in the group as such Secretaries determine is necessary or appropriate for the enforcement and administration of the Code and ERISA. The SECURE Act also mandates that the consolidated reporting by such a group must include such information as will enable participants in each of the plans to identify any aggregated return/report filed with respect to their plan. Section 202 provides that to constitute an eligible group of plans, all of the plans in the group must be either individual account plans or defined contribution plans as defined in section 3(34) of ERISA or in section 414(i) of the Code; must have the same trustee as described in section 403(a) of ERISA; the same one or more named fiduciaries as described in section 402(a) of ERISA; the same administrator as defined in section 3(16)(A) of ERISA and plan administrator as defined in section 414(g) of the Code; must have plan years beginning on the same date; and must provide the same investments or investment options to participants and beneficiaries. Section 202 further provides that a plan not subject to Title I of ERISA shall be treated as meeting these requirements for being eligible to be part of a consolidated reporting

DOL's general regulatory authority in ERISA sections 109 and 505.

[3] Estimates are based on 2019 Form 5500 filings. DOL notes that single employer welfare plans with under 100 participants that are unfunded or insured (generally don't hold assets in trust) are exempt from filing a Form 5500 under 29 CFR 2520.104–29. Therefore while DOL estimates there are 2.5 million health plans and 885,000 non-health welfare plans, respectively, only 69,000 and 91,000 of these plans filed a 2019 Form 5500.

[4] Source: U.S. Department of Labor, EBSA calculations using the Auxiliary Data for the March 2019 Annual Social and Economic Supplement to the Current Population Survey.

[5] EBSA based these estimates on the 2018 Form 5500 filings with the U.S. Department of Labor (DOL), reported SIMPLE assets from the Investment Company Institute (ICI) Report: The U.S. Retirement Market, First Quarter 2021, and the Federal Reserve Board's Financial Accounts of the United States Z1 June 10, 2021.

[6] EFAST2 is an all-electronic system that receives and displays Forms 5500 Series Annual Returns/Reports and Form PR Pooled Plan Provider Registrations. EFAST2 is operated by a private-sector government contractor on behalf of DOL, IRS, and PBGC.

[7] *See, e.g.,* Revisions to Annual Return/Report-Multiple-Employer Plans, Interim Final Rule, 79 FR 66617 (Nov. 10, 2014) (updating the Form 5500 instructions to require all multiple employer plans, including MEWAs, to provide a list of participating employers and certain financial information, as required by ERISA section 103(g)); Filings Required of Multiple Employer Welfare Arrangements and Certain Other Related Entities, Final Rule, 78 FR 13781 (Mar. 1, 2013) (among other things, added new questions to Form 5500 for MEWAs that are required to complete the Form 5500 to provide information on their most recent Form M–1 (Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs) filing) (Form M–1).

[8] The SECURE Act was enacted December 20, 2019, as Division O of the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94).

group of plans, if the same person that performs each of the functions described in the above requirements, as applicable, for all other plans in such group performs each of such functions for such plan.[9]

Section 101 of the SECURE Act amended ERISA section 3(2) and added ERISA sections 3(43) and 3(44) to allow for a new type of ERISA-covered MEP—a defined contribution pension plan called a ''pooled employer plan'' operated by a ''pooled plan provider.'' Pooled employer plans allow multiple unrelated employers to participate without the need for any common interest among the participating employers (other than having adopted the plan).[10] Under section 3(2) of ERISA, a pooled employer plan is treated for purposes of ERISA as a single plan that is a multiple employer plan. A pooled employer plan is defined in section 3(43) as a plan that is an individual account plan established or maintained for the purpose of providing benefits to the employees of two or more employers; that is a qualified retirement plan or a plan funded entirely with individual retirement accounts (IRA plan); and the terms of which must meet certain requirements set forth in the statute.[11] The term pooled employer plan does not include a multiemployer plan as defined in ERISA section 3(37) or a plan maintained by employers that have a common interest other than having adopted the plan.[12] The term also does not include a plan established before the date the SECURE Act was enacted unless the plan administrator elects to have the plan treated as a pooled employer plan and the plan meets the ERISA requirements applicable to a pooled employer plan established on or after such date. The existence of this new type of multiple employer plan requires some adjustments to the Form 5500 to provide for annual reporting by such plans.[13]

Section 101 of the SECURE Act also amended ERISA section 103(g) for MEPs. Section 103(g) of ERISA requires that the annual return/report of a MEP generally must include a list of participating employers and a good faith estimate of the percentage of total contributions made by each participating employer during the plan year. The SECURE Act amended section 103(g) to expand the participating employer information that must be reported on the Form 5500 Annual Return/Report [14] also to require the aggregate account balances attributable to each employer in the plan (determined as the sum of the account balances of the employees of each employer and the beneficiaries of such employees), and applied section 103(g) to retirement plans that currently meet the definition of a MEP under ERISA section 210(a), including any pooled employer plans, for plan years beginning on or after January 1, 2021.[15] With respect to a pooled employer plan, section 103(g) further requires that the annual return/report must include the identifying information for the person designated under the terms of the plan as the pooled plan provider.

In addition to various changes to the forms and instructions to address these statutory changes and reflect the existence of pooled employer plans and defined contribution plan reporting arrangements, some of the annual reporting changes being proposed are intended to ensure appropriate transparency and financial accountability for pooled employer plans, other MEPs, and defined contribution plan reporting arrangements. The rationales for some of those changes apply more broadly to retirement plans as a class (for example, improvements to the content and format for the financial schedules that retirement plans use to report information regarding their assets, investments, income, and expenses), and, accordingly, some of the changes are being proposed for retirement plans in general.

C. Overview of Proposed Changes to Forms, Schedules, and Instructions

1. General Proposed Changes

The proposed revisions involve the following major categories of changes, along with other technical revisions and updates, to the current structure and content of the Form 5500 Annual Return/Report.

- Update the Form 5500 and its instructions to establish requirements pursuant to section 202 of the SECURE Act for consolidated returns/reports for eligible defined contribution group (DCG) reporting arrangements as an alternative method of compliance for certain individual account or defined contribution retirement plans relying on the consolidated report to satisfy the generally applicable requirement that employee benefit plans file a Form 5500. This would include adding a new Schedule DCG (Individual Plan Information) to provide individual plan-level information for defined contribution pension plans covered by a DCG consolidated Form 5500 filing. It would also include adding a new checkbox on the Form 5500 (Part II, line 10a(4)) to indicate that Schedule DCG is attached to the Form 5500, with a space for the filer to enter the number of Schedules DCG (one per plan) attached to the Form 5500 filing.
- Update the Form 5500 and its instructions to add a new Schedule MEP (Multiple Employer Pension Plan). MEPs would report information specific to MEPs, including the ERISA section 103(g) participating employer information, updated to add the new aggregate account information that is

[9] SECURE Act Section 202(c).

[10] DOL sought comments through a Request for Information published on July 31, 2019, on ''open'' MEP structures (those without the need for any commonality among the participating employers or other genuine organization relationship unrelated to participation in the plan) being treated as one multiple employer plan for purposes of compliance with ERISA. The DOL does not have any current plan to take further action regarding defined contribution open MEPs due to the SECURE Act provisions permitting pooled employer plans as a type of open MEP.

[11] 29 U.S.C 1002(43).

[12] In establishing a pooled employer plan as a new type of multiple employer plan, the SECURE Act in section 101(c) specifically referred to plans maintained by employers that have a common interest other than having adopted the plan. For example, the DOL's recent final association retirement plan regulation, at 29 CFR 2510.3–55, published July 31, 2019, clarified and expanded the types of arrangements that could be treated as MEPs under Title I of ERISA to include plans established and maintained by a bona fide group or association of employers or by a professional employer organization (PEO). The SECURE Act provision excluding a ''plan maintained by employers that have a common interest'' from the definition of a pooled employer plan does not preclude employers with a common interest other than participating in the plan from establishing or participating in a pooled employer plan. Rather, it means that if a group of employers with a common interest other than participating in the plan establish a MEP, *e.g.,* an association retirement plan under the DOL's regulation, the association retirement plan will not be subject to the SECURE Act requirements for a plan to be a pooled employer plan.

[13] New section 3(44) of ERISA establishes requirements for pooled plan providers, including a requirement to register with the DOL before beginning operations as a pooled plan provider. A parallel requirement to file a registration statement with the Secretary of Treasury is in section 413(e)(3)(A)(ii) of the Code. On November 16, 2020, the DOL published a notice of final rulemaking establishing the registration requirement for pooled plan providers. 85 FR 72934 (Nov. 16, 2020). The Treasury Department and the IRS have advised that filing the Form PR with the DOL will satisfy the requirement to register with the Secretary of the Treasury. The instructions to the Form PR (Pooled Plan Provider Registration) (Form PR) advised registrants to use the same identifying information on the Forms 5500 Annual Return/Report filed by the pooled employer plans, particularly name; EIN for the pooled plan provider; any identified affiliates providing services; trustees; and plan name and number for each pooled employer plan. The Form PR and its instructions, as well as any Form PR that have been filed with the DOL by pooled plan providers, are available on the DOL website at *www.efast.dol.gov*.

[14] SECURE Act Section 101(d).

[15] SECURE Act Section 101(e)(1).

relevant only for pension plans, on the Schedule MEP. Questions intended to satisfy the SECURE Act's reporting requirements for pooled employer plans and questions to link the Form PR (Pooled Employer Registration) and the Form 5500 for each plan operated by a pooled plan provider would also be on the Schedule MEP. A new checkbox would be added to the Form 5500 (Part II, line 10a(5) to indicate that Schedule MEP is attached to the Form 5500.

- Transfer the participating employer information from the Form 5500 Annual Return/Report to the Form M–1 for all multiple employer welfare arrangements (MEWAs)) (plan and non-plan MEWAs)) that offer or provide coverage for medical benefits, and continue to require reporting of participating employer information on the Form 5500 Annual Return/Report for plan MEWAs that provide other benefits.[16]
- Update Schedule H and instructions to standardize the schedules of investment assets required to be included in the annual return/report (Schedule H, line 4i Schedules), so that the information can be entered or imported for improved electronic use and transparency.
- Update the Form 5500 and 5500–SF and their instructions on counting participants to change the current threshold for determining when a defined contribution plan may file as a small plan, including eligibility for the waiver of the requirement for small plans to have an audit and include the report of an independent qualified public accountant (IQPA) with their annual report. Specifically, instead of using all those eligible to participate, filers generally would look at the number of participants/beneficiaries with account balances as of the beginning of the plan year (the first plan year would use an end of year measure). This proposed change would be reflected in a new line item on the Form 5500 and Form 5500–SF.[17]
- Add trust questions to the Form 5500, the Form 5500–SF, and the IRS Form 5500–EZ, regarding the name of the plan's trust, the trust's EIN, the name of the trustee or custodian, and the trustee's or custodian's telephone number. This information will enable the Agencies to more efficiently focus on compliance concerns for retirement plan trusts, including those for pooled employer plans and DCG reporting arrangements.
- Revise the 2021 5500 Annual Return/Report instructions to provide an interim method of reporting participating employer information for MEPs and pooled plan provider identification information for pooled employer plans pending the Schedule MEP implementation for 2022 plan year filings.

Section 101 of the SECURE Act also amended ERISA section 104(a)(2)(A) to permit the Secretary of Labor to prescribe by regulation simplified reporting for MEPs subject to ERISA section 210(a) with fewer than 1,000 participants in total, as long as each participating employer has fewer than 100 participants. The DOL is not, however, currently proposing to amend the current reporting rules to establish a ''simplified report'' for such plans. The DOL is interested in stakeholder comments on why MEPs subject to ERISA section 210(a) should be subject to different reporting requirements than single employer plans that cover fewer than 1,000 participants, and on appropriate conditions and limitations for such a simplified report that would ensure transparency and financial accountability comparable to that for other large retirement plans.

2. Internal Revenue Code-Based Questions for the 2022 Form 5500s

To better identify non-compliant plans, the IRS is proposing the following changes to the 2022 forms, schedules, and instructions, including adding the proposed Schedule DCG, so that certain questions are answered at the individual plan level (not the DCG level) in order for a plan's annual reporting obligation to be satisfied by a DCG Form 5500 filing:

- Add a nondiscrimination and coverage test question to Form 5500, Form 5500–SF, and proposed Schedule DCG that was on the Schedule T before it was eliminated. The question asks if the employer aggregated plans in testing whether the plan satisfied the nondiscrimination and coverage tests of Code sections 401(a)(4) and 410(b).
- Add a question to Form 5500, Form 5500–SF, and proposed Schedule DCG, for section 401(k) plans, asking whether, if applicable, the plan sponsor used the design-based safe harbor rules or the ''prior year'' or ''current year'' ADP test.
- Add a question to Form 5500, Form 5500–SF,[18] and proposed Schedule DCG asking whether the employer is an adopter of a pre-approved plan that received a favorable IRS Opinion Letter, the date of the favorable Opinion Letter, and the Opinion Letter serial number.

3. Defined Benefit Plan/Title IV Questions for the 2022 Form 5500s

The proposal includes certain changes designed to improve reporting by defined benefit plans subject to Title IV of ERISA. The proposed changes would:

- Modify Schedule MB, line 3 instructions to require an attachment that breaks down the total withdrawal liability amounts by date, separately specifying the periodic withdrawal liability amounts and lump sum withdrawal liability amounts.
- Modify Schedule MB by adding a new requirement for plans that assess withdrawal liability to an employer during the plan year, to report the interest rate used to determine the present value of vested benefits for withdrawal liability determinations. This information would be reported in a renumbered new line, 6f.
- Modify Schedule MB for the questions related to the line 6 ''expense load'' to better align with the various ways multiemployer plans incorporate expense loads into their calculations.
- Modify Schedule MB, line 8 by requiring additional information about demographics, benefits and contributions for plans with 500 or more total participants on the valuation date. Certain PBGC-insured single-employer plans would be required to report the some additional information as well.
- Modify Schedule MB by changing the ''age/service'' scatter attachment which is currently required for PBGC-insured multiemployer plans with active participants, regardless of the number of participants.
- Modify Schedule MB by clarifying the line 4f instructions and Schedule language concerning when or if plans in critical status or critical and declining

[16] The Agencies may choose as part of a final rule to have those plan MEWAs that are not required to file the Form M–1 complete the relevant participating employer information on the Schedule MEP rather than continuing to complete as an attachment to the Form 5500. The agencies invite comment on any preference from a disclosure, forms preparation, or data usage perspective as to how the information is collected.

[17] This change was proposed partly in light of section 112 of the SECURE Act, which provides that long-term, part-time workers that have reached specified minimum age requirements and worked at least 500 hours in each of three consecutive 12-month periods must be permitted to make elective contributions to a Code section 401(k) qualified cash or deferred arrangement for plan years beginning on or after January 1, 2024. This could add to the number of participants who are eligible to, but who elect not to participate in a plan, which could impact whether a plan needs to file as a large plan. The DOL expects that excluding from the participant count those participants who are eligible to participate but did not have an account balance will reduce expenses for small employers to establish and maintain a small retirement plan, and as a consequence, encourage more employers to offer workplace-based retirement savings plans to their employees.

[18] IRS will separately make a parallel update to the Form 5500–EZ, which is solely in the jurisdiction of the IRS.

status are projected to emerge or become insolvent.

- Make the Schedule SB, line 26 reporting requirements about demographics and benefits similar to the requirements for PBGC-insured multiemployer plans.
- Modify Schedule SB's Part IX, line 41 because the previously required information related to elective funding relief under the Pension Relief Act of 2010 is no longer relevant, and in its place, require information about the elective funding relief under the American Rescue Plan Act of 2021.
- Modify Schedule R's Part V, line 13 requirement that multiemployer defined benefit pension plans subject to minimum funding standards report identifying information about any participating employer whose contributions to the plan account for more than five (5) percent of the total contributions for the year to require that the ten employers who contributed the largest amounts be reported, even if that employer's contribution accounted for less than five (5) percent of the total.
- Modify the instructions to permit (but not require) certain attachments to Schedule MB and SB to be provided in a tabular format (spreadsheet) rather than PDF or TXT formats.

D. Appendices

The Agencies have included the following appendices to provide more detailed illustrations and explanations of the proposed changes: (1) Appendix A—a facsimile of proposed Schedule MEP (Multiple Employer Pension Plan) and its instructions; (2) Appendix B—a facsimile of proposed Schedule DCG (Individual Plan Information) and its instructions; (3) Appendix C—a detailed description of proposed changes to the 2021 Form 5500, the Form 5500–SF, and their instructions; (4) Appendix D—a detailed description of proposed changes to the 2022 Form M–1 and its instructions; (5) Appendix E—a detailed description of proposed changes to the 2022 Form 5500, Form 5500–SF, applicable schedules, and their instructions.[19]

Certain amendments to the annual reporting regulations are necessary to accommodate some of the proposed revisions to the forms. The DOL is publishing separately today in the **Federal Register** proposed amendments to the DOL's annual reporting regulations. That document includes a discussion of the findings required under sections 104 and 110 of ERISA that are necessary for the DOL to adopt the Form 5500 Annual Return/Report, including the Form 5500–SF, if revised as proposed herein, as an alternative method of compliance, limited exemption, and/or simplified report under the reporting and disclosure requirements of Part 1 of Subtitle B of Title I of ERISA.

II. Request for Comments

The Agencies invite comments from interested persons on all facets of the proposed forms and instruction changes. Comments should be submitted in accordance with the instructions at the beginning of this document. Commenters are asked to take into account the costs and burdens to plans, participants and beneficiaries, plan fiduciaries, plan service providers, and other affected parties, in commenting on the proposed annual reporting changes, including any suggested alternatives.

As noted above, the DOL also is publishing elsewhere in today's **Federal Register** a Notice of Proposed Rulemaking with proposed amendments to the reporting and disclosure regulations at Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations to implement certain proposed Form 5500 Annual Return/Report changes under Title I of ERISA. To avoid unnecessary duplication of effort, public comments submitted in response to this Notice of Proposed Forms Revisions will be treated as public comments on the Notice of Proposed Rulemaking to the extent they include information relevant to the proposed regulatory amendments.

The DOL components of this proposal are generally focused on implementing annual reporting changes related to the SECURE Act and MEPs and a limited number of other supporting proposed changes intended to ensure the Form 5500 serves as an appropriate transparency and financial accountability tool for retirement plans, including pooled employer plans and MEPs. The DOL has added a separate project to its semi-annual regulatory agenda that would focus on a broader range of improvements to the Form 5500 annual reporting requirements. The regulatory action is part of a strategic project with the IRS and PBGC to improve the Form 5500 Annual Return/Report. Modernizing the financial and other annual reporting requirements on the Form 5500, continuing to make the investment and other information on the Form 5500 more data mineable, and potential changes to group health plan annual reporting requirements are part of that evaluation. The project is also focused on enhancing the agencies' ability to collect employee benefit plan data that best meets the needs of changing compliance projects, programs, and activities. *See www.reginfo.gov* for more information. Public comments on such broader improvements to the Title I components of the Form 5500 are beyond the intended scope of this rulemaking.

III. Discussion of Proposed Changes

A. SECURE Act Section 202 Defined Contribution Group (DCG) Reporting Arrangements

Section 202 of the SECURE Act directs the Secretaries to modify the Form 5500 to allow certain groups of defined contribution pension plans to file a single consolidated annual return/report. For a group of plans to be able to file a consolidated return/report, the SECURE Act provides that all of the plans must be either individual account plans or defined contribution pension plans that have the same trustee; the same one or more named fiduciaries; the same plan administrator under ERISA and the Code; the same plan year; and provide the same investments or investment options for participants and beneficiaries.

The SECURE Act also provides that in developing the consolidated return or report for such arrangements, the Secretaries shall require such information as will enable a participant in a plan to identify any consolidated return or report filed with respect to the plan, and may require such return or report to include any information regarding each plan in the group as each Secretary determines is necessary or appropriate for the enforcement and administration of the provisions of ERISA and the Code.

Pursuant to Section 202 of the SECURE Act directing the Secretaries to modify the Form 5500 to allow certain groups of defined contribution pension plans to file a single consolidated annual return/report, the DOL and the IRS (the ''Departments'') have determined that an efficient and effective approach to establishing such a consolidated return/report option would be to amend the Form 5500 and its related instructions to provide that the filing requirements for large pension plans and direct filing entities (DFEs)

[19] The appendices include mock-ups of certain forms or parts of forms that are intended to be illustrative and facilitate stakeholders' ability to comment on the proposed changes. This approach of showing proposed changes will reduce costs associated with publication of the proposed form changes in the **Federal Register** and provide greater flexibility for the related EFAST2 development processes. The Agencies intend to publish mock-ups of the forms on the DOL's website as part of the EFAST third party software developer certification process and in furtherance of public education efforts about the changes to be implemented.

would generally apply to this new type of DFE—a defined contribution group (DCG) reporting arrangement, except that an additional schedule to report individual plan level information—the proposed Schedule DCG, would have to be attached for each plan included in the DCG filing.[20] Consistent with section 202(b) of the SECURE Act, as discussed in more detail below, the Departments are proposing to obtain for each plan in the DCG the additional information requested on a new proposed Schedule DCG, and are proposing certain other key conditions for DCG reporting arrangements that are intended to ensure appropriate transparency and financial accountability. Specifically, under the proposal: (1) The DCG would file a Form 5500 under rules and conditions that apply generally to large defined contribution pension plans; (2) each of the plans participating in the DCG would need to meet certain conditions as discussed in more detail below, including that the participating plan must not hold any employer securities, be 100% invested in certain secure, easy to value assets that meet the definition of ''eligible plan assets'' and be audited by an IQPA or be eligible for the waiver of the annual examination and report of an IQPA under 29 CFR 2520.104–46, but not by reason of enhanced bonding; (3) the DCG's Form 5500 would have to provide the plan level information reported on the proposed Schedule DCG regarding the covered plans, including an IQPA audit report for each participating large plan; and (4) the investment assets of the plans participating in the DCG would have to be held in a single trust of the DCG reporting arrangement and the consolidated Form 5500 filed by the DCG would include an audit of the DCG's trust financial statements.

An important aspect of the audit of the DCG trust would be that, in the DOL's view, the versions of the separate schedules referenced in ERISA section 103(a)(3)(A) and 29 CFR 2520.103–10(b) and proposed 2520.103–14(b) that would be filed as part of the DCG consolidated Form 5500 would be treated as ERISA section 103(b)(3) supplemental schedules for purposes of the required IQPA's opinion on whether those schedules are presented in conformity with DOL rules and regulations, including the delinquent participant contributions schedule filed by the DCG in connection with line 4a of its Form 5500, Schedule H. The DOL views these conditions as providing important financial accountability and oversight protections while also allowing DCGs to offer annual reporting cost-efficiencies, particularly for the small plans that we believe SECURE Act section 202 was intended to benefit, that are comparable to those that can be offered by MEPs, including pooled employer plans.

The DOL is also publishing a separate Notice of Proposed Rulemaking that includes a proposal to add new regulations at 29 CFR 2520.103–14 and 2520.104–51 pursuant to section 110 of ERISA that would set forth this DCG option as an alternative method of compliance for eligible plans with the generally applicable requirement to file their own separate Form 5500.

1. General Section 202 Conditions Applicable to Covered Plans

The Departments' review of the conditions in section 202 of the SECURE Act suggests that it was primarily aimed at plans of unrelated small businesses that adopt a plan that has received approval from the IRS as to its form through the IRS Pre-Approved Program (pre-approved plan) offered by the same provider, and that section 202 was intended to provide this type of business structure with annual reporting cost efficiencies similar to those that MEPs and pooled employer plans can offer to their participating employers. Accordingly the conditions and reporting requirements in this proposal focus on such arrangements. The Departments solicit public comments on whether the final rule should include other or different conditions for DCG reporting arrangements.

Under the proposed Form 5500 form changes and the DOL's related proposed regulation, and pursuant to the terms of section 202 of the SECURE Act, all of the plans relying on the DCG consolidated return/report must be individual account plans or defined contribution pension plans that have the same trustee and trust(s); the same one or more named fiduciaries; the same plan administrator under ERISA and the Code; the same plan year; and provide the same investments or investment options for participants and beneficiaries. The Departments are providing the following explanations of some aspects of and limitations related to those conditions that are part of the proposal.

With respect to the same trustee requirement, section 403(a) of ERISA provides that, except as provided in ERISA section 403(b), all assets of an employee benefit plan shall be held in trust by one or more trustees. The criteria set forth in ERISA section 403(b) apply to the DCG trustee under the proposal, except, pursuant to the SECURE Act provision there must be only one trustee for all the plans participating in a DCG reporting arrangement. The common trustee must be either named in the trust instrument or in the plan instrument or appointed by a person who is a named fiduciary of the participating plan, and upon acceptance of being named or appointed, the trustee shall have exclusive authority and discretion to manage and control the assets of the plan, except to the extent that the plan expressly provides that the trustee is subject to the direction of a named fiduciary who is not a trustee (in which case the trustees shall be subject to proper directions of such fiduciary which are made in accordance with the terms of the plan and which are not contrary to ERISA), or authority to manage, acquire, or dispose of assets of the plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA.

The Departments note that, historically, the IRS conditions applicable to many pre-approved plans required that employers who used what was known as a ''master'' plan were required to use the same trust or custodial account, whereas each employer had a separate trust or custodial account in a ''prototype plan.'' [21] Under the proposal, the ''same trust'' requirement for the consolidated report would be satisfied by the same trust structure historically used by

[20] The proposed new regulation that would be at 29 CFR 2520.104a–9 published in the parallel NPRM provides that, as would be the case for all of the participating plans in the DCG reporting arrangement if they were filing individually, the aggregated Form 5500 for the DCG is due no later than the end of the 7th month after the end of the common plan year that all the plans must have in order to participate in a DCG reporting arrangement pursuant to the requirement in section 202 of the SECURE Act and the proposed regulation that would be at 29 CFR 2520.104–51. Because the DCG filing is an alternative to each participating plan filing its own Form 5500, that would mean that each plan would have to submit its own IRS Form 5558 to extend the plan's due date, and, as a consequence, extend the due date for the DCG filing. A plan that did not submit a timely Form 5558 and that participated in a DCG filing that was submitted after the 7th month normal due date would be treated as having filed late. Public comments are specifically solicited on how the filing extension process should be structured for DCGs, including whether DCG reporting arrangements should be able to file a single Form 5558 to obtain an extension for filing the DCG consolidated report on behalf of the participating plans as an alternative to having each individual plan file a Form 5558 for there to be an extension for the reporting group as a whole. The Departments note that under the somewhat similar consolidated reporting provisions applicable to GIAs, the GIA is permitted to use the Form 5558 to apply for an extension of time the GIA consolidated report on behalf of the plans participating in the GIA.

[21] *See www.irs.gov/retirement-plans/types-of-pre-approved-retirement-plans.*

employers using ''master'' plans. Use of sub-trusts of the DCG trust would be permitted, but the proposal would not cover arrangements that allow separate plans to have a separate trust for investments. As discussed in more detail below, part of the reason for this provision stems from considerations related to the establishment of audit requirements for DCG reporting arrangements and the otherwise generally applicable requirement under Title I of ERISA for plans that cover 100 or more participants file with their Form 5500 an audit report of an independent qualified public accountant (IQPA) and the application of Generally Accepted Auditing Standards or GAAS (which ERISA section 103 applies to employee benefit plan audits).

Although, as described above, section 202 of the SECURE Act includes a requirement that the eligible plans must have the same ''trustee'' as described in section 403(a) of ERISA, the Departments note that it is commonplace for ERISA covered plans to use insurance (*e.g.,* individual account plans using variable annuity structures and Code section 403(b)(1) plans) and custodial accounts (*e.g.,* Code section 403(b)(7) plans) as funding vehicles. ERISA section 403(b) includes explicit exceptions to the trust requirement for such plan designs. There is no legislative history for SECURE Act section 202 discussing why the provision was limited to plans with ''trustees,'' and the Departments do not believe that the SECURE Act section 202 requirement for a ''trustee'' can be read to include plans without trustees funded by insurance or custodial accounts pursuant to the trust exceptions in ERISA section 403(b). Nonetheless, the Departments specifically solicit comments on whether they should, pursuant to their general regulatory authority, provide a consolidated reporting option for plans that use the same custodial account or insurance policy as the funding vehicle for their plans, and if so, whether special conditions should apply in light of the absence of a trustee or trustees.

With respect to the ''same one or more named fiduciaries requirement,'' ERISA section 402 provides that every employee benefit plan shall be established and maintained pursuant to a written instrument. Such instrument shall provide for one or more named fiduciaries who jointly or severally have authority to control and manage the operation and administration of the plan. Section 402 of ERISA further provides that the term ''named fiduciary'' means a fiduciary who is named in the plan instrument, or who, pursuant to a procedure specified in the plan, is identified as a fiduciary (A) by a person who is an employer or employee organization with respect to the plan or (B) by such an employer and such an employee organization acting jointly. The Departments understand that it is customary for the employer/plan sponsor to be a named fiduciary of the employer's plan. The Departments do not believe the SECURE Act intended that each employer in a group of plans be a named fiduciary of every plan in the group. Accordingly, the proposal would allow for the employer/plan sponsor to be a named fiduciary of each employer's own plan, provided that the other named fiduciaries under the plans are the same and common to all plans.

The SECURE Act further requires that all the plans have the same administrator as defined in section 3(16)(A) of ERISA and plan administrator as defined in section 414(g) of the Code. Under the proposal, the plans must designate the same person (which could be an entity or organization) as the administrator. In general, under ERISA and the Code the ''plan administrator'' or ''administrator'' is the person specifically so designated by the terms of the instrument under which the plan is operated. If an administrator is not so designated, the plan administrator is the plan sponsor, as defined in section 3(16)(B) of ERISA. The Departments do not believe that the default ''plan sponsor'' provision is workable in this context, and, accordingly, the proposal requires that there be a designated common plan administrator and that the administrator be the same for all the plans relying on the DCG consolidated Form 5500.

The proposal also requires that all the plans provide the same investments or investment options to participants and beneficiaries to be able to rely on the DCG consolidated Form 5500 as satisfying their annual reporting obligation. In the Departments' view, this requirement in part was intended to allow for appropriate transparency in the consolidated financial information that would be filed by the DCG. To the extent the covered plans had different investments or investment options, much more detailed financial reporting would be needed to provide appropriate oversight and accountability. The Departments also believe that, even absent the proposed ''eligible plan assets condition for DCGs,'' the SECURE Act's ''same investments or investment options'' requirement effectively precludes plans that hold employer securities from participating in a DCG reporting arrangement as well as precluding treatment of brokerage windows as an ''investment option'' because such investments and investment alternatives would conflict with the investment uniformity objectives of the SECURE Act requirement. The Departments, however, specifically solicit comments on whether the final rule should allow employer securities as an exception to the ''same investments or investment options'' requirement. The Departments also solicit comments on whether the final rule should allow brokerage windows, self-directed brokerage accounts, and similar features in plans participating in DCG arrangements, and, if so, what reporting requirements should be applied, *e.g.,* what information should be collected regarding the brokerage windows/accounts, the participants using the brokerage windows/accounts, and the individual assets held by the plans as a result of investments made through brokerage windows/accounts.

Section 202 further provides that a plan not subject to Title I of ERISA can be part of a DCG reporting arrangement if the non-Title I plan and all other plans in the reporting group have the same persons acting as the trustee as defined in ERISA section 403(a), the named fiduciaries as described in ERISA section 402(a), the administrator as defined in ERISA section 3(16)(A), and the plan administrator as defined in Code section 414(g), as applicable. In the Departments' view, this provision was directed at so-called ''one-participant'' plans required to file the IRS Form 5500–EZ. IRS views the current Form 5500–EZ as providing plan sponsors with a simple and streamlined means to satisfy the annual reporting requirement under section 6058 of the Code. The information being requested on the Schedule DCG for a DCG is almost identical to the information already provided on the Form 5500–EZ, so that the group filing arrangement would not effectively reduce the information a Form 5500–EZ filer would need to provide to IRS in a separate filing. Additionally, the plan administrator will need to file a consolidated Form 5500 (with any required schedules) for the DCG that provides aggregate information for all Form 5500–EZ filers. Presumably, the DCG will require a Form 5500–EZ filer to provide at least as much information as would be required to file an individual Form 5500–EZ. Finally, IRS might incur significant costs and use significant resources if it were to develop a separate group filing arrangement for Form 5500–EZ filers.

Before incurring these costs and using these resources, IRS requests comments from interested parties on whether Form 5500–EZ filers are expected to be interested in participating in a DCG structure, including a separate DCG structure only for Form 5500–EZ filers, in light of the lack of burden reduction that a Form 5500–EZ filer would experience by participating in a DCG structure. With respect to the latter, the Departments request comments on the feasibility of including both ERISA and non-ERISA filers in a single DCG filing, including with respect to the application of the audit requirements under Title I.

2. Conditions for Plans To Participate in a DCG Reporting Arrangement

To be eligible to rely on the proposed alternative method of compliance, the employee benefit plan (1) must have all of its investment assets held in a single trust of the DCG reporting arrangement; (2) the plan must not hold any employer securities at any time during the plan year; (3) at all times during the plan year, the plan must be 100% invested in certain secure, easy to value assets that meet the definition of ''eligible plan assets'' (see the instructions for line 6a of the Form 5500–SF), such as mutual fund shares, investment contracts with insurance companies and banks valued at least annually, publicly traded securities held by a registered broker dealer, cash and cash equivalents, and plan loans to participants; (4) the plan must be audited by an IQPA or be eligible for the waiver of the annual examination and report of an IQPA under 29 CFR 2520.104–46, but not by reason of enhanced bonding (*see* instructions for line 6b of the Form 5500–SF); and (5) multiemployer plans and MEPs (including pooled employer plans and professional employer organizations (PEOs)) cannot participate in DCG reporting arrangements.

An important aspect of the audit of the DCG trust would be that, in the DOL's view, the versions of the separate schedules referenced in ERISA section 103(a)(3)(A) and 29 CFR 2520.103–10(b) and 2520.103–2(b) that would be filed as part of the DCG consolidated Form 5500 would be treated as ERISA section 103(b)(3) supplemental schedules for purposes of the required IQPA's opinion on whether those schedules are presented in conformity with DOL rules and regulations, including the delinquent participant contributions schedule filed by the DCG in connection with line 4a of its Form 5500, Schedule H. The DOL views these conditions as providing important financial accountability and oversight protections while also allowing DCGs to offer annual reporting cost-efficiencies, particularly for the small plans that we believe SECURE Act section 202 was intended to benefit, that are comparable to those that can be offered by MEPs, including pooled employer plans.

With respect to the audit requirement for large plans participating in a DCG, the DOL understands that under GAAS, it would not be possible to have a consolidated audit of all the participating plans in the DCG reporting arrangement. Rather, under GAAS, each large plan in the DCG reporting arrangement would have to be subject to its own separate audit. By comparison it would be possible, under GAAS, for a DCG reporting arrangement to be subjected to a single audit if it used a single trust for all of the plans covered by the DCG report. Such a ''single trust'' audit, however, would cover only the trust's financial statements and would not cover aspects of plan operations and finances that would be covered by a GAAS audit at the plan level. The DOL views an IQPA audit as an important financial transparency and accountability condition for DCG reporting arrangements. Generally, pension plans and funded welfare plans with 100 or more participants are required to have an audit of the plan's financial statements performed by an IQPA. Under Statement on Auditing Standards No. 136 (SAS 136), *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA,* independent qualified public accountants are required to consider relevant plan provisions that affect the risk of material misstatement for various transactions, account balances, and related disclosures. Areas such as participant eligibility, plan contributions, benefit payments and participant loans are all covered as part of a plan level audit. Additionally, auditors are required to communicate reportable findings to the plan that are identified during the audit of the plan. For example, it has been the DOL's experience that plan audits lead to increased reporting of prohibited transactions, such as identifying and disclosing delinquent participant contributions.

An audit of a trust, such as a DCG trust, does not have similar requirements. In a trust audit, the line items on the trust's financial statement are audited, but because the underlying participating plans themselves are not audited, compliance with the provisions of the plans that are invested in and funded by the trust are not audited. Therefore, in a trust audit, the amount of contributions received by the trust might be tested against the contributions remitted by participating plans, but, whether those contributions amounts remitted are in accordance with the individual plan provisions would not be tested, as they would be tested in an audit of the plan. There could be undisclosed, material errors in the amount of contributions remitted to the trust versus what should have been remitted. Similarly, in a trust audit, the benefit payments to participants might be tested in terms of amounts paid and whether they were authorized, but whether those were in compliance with plan provisions, such as vesting provisions, would not be tested as they would be tested in a plan's audit. In a plan audit, participant data is tested. Participant data testing involves determining whether employees are properly included or excluded from participating and whether the census data upon which eligibility for certain contributions and distributions are made is accurate. The audit of a trust would not test this at all. Finally, the materiality threshold for a trust audit could be significantly higher than that which would apply in the case of an individual participating plan because the trust threshold would be based on total assets in the trust rather than assets in each individual plan. After carefully considering these issues, the Departments decided to propose that a large plan that elects to participate in a DCG must continue to be subject to an IQPA audit and that the audit report for the plan would have to be filed with the consolidated Form 5500 of the DCG reporting arrangement.

The DOL acknowledges that at least some of these considerations could be applied to small plans participating in the DGC arrangement. While the DOL did not believe it would be appropriate to relieve from the IQPA audit requirement those large plans currently subject to the audit, it also did not believe that it would be appropriate to require small plans that are not currently required to have an IQPA audit to have such an audit as a condition of participating in a DCG reporting arrangement. Rather, in light of the fact that DCG reporting arrangements would be consolidating the assets of many unaffiliated small plans under the control of a single trustee in a single trust, and the DOL's understanding that such a trust could be subject to a single GAAS audit, the DOL is proposing that the DCG trust be audited by an IQPA as a way of adding protections for funds aggregated in the DCG trust. The DOL notes that this structure has some parallels to the

current reporting alternative for group insurance arrangements (GIAs) under 29 CFR 2520.103–2, another type of DFE that files the Form 5500 Annual Return/Report on behalf of participating welfare benefit plans. The need for more information for DCGs than for GIAs is due to the difference between retirement and welfare plans, including the respective requirements under the Code, and also due to the fact that GIAs must provide welfare benefits fully through insurance.

DOL further acknowledges that, under the proposal, for plans to be able to satisfy their annual reporting obligation by relying on the Form 5500 filing by a DCG reporting arrangement, the plans would have to be 100% invested in eligible plan assets as defined in the Form 5500–SF instructions.

Accordingly, plan assets in the DCG trust would, by definition, be held by regulated financial institutions, including banks or similar financial institutions and insurance companies, and may qualify for limited scope audit treatment in accordance with ERISA section 103(a)(3)(C). Thus, even for large plans, the investment assets certified by those financial institutions/insurance companies would not be audited, and the auditor would not be performing valuation work on the assets covered by the bank or insurance company certifications. Although that may diminish some aspects of the IQPA requirement for large plans in DCG reporting arrangements, the DOL did not believe that it would be appropriate to propose that large plans be precluded from participating in a DCG unless the plan disclaimed reliance on the limited scope audit provisions in ERISA section 103(a)(3)(C) and had a full scope audit performed.

The DOL further expects that, because all of the investments held in the DCG's single trust would be the subject of the DCG audit, it is likely that to reduce expenses the DCG reporting arrangement and the participating large plans would engage the same auditor to perform the audits of the DCG trust and any individual large plans participating in the DCG reporting arrangement. Alternatively, to the extent the individual plans engage different auditors, the DOL expects that the use of reports issued under Statement on Standards for Attestation Engagements No. 16 (SSAE 16) may permit the individual plan auditors to use those reports for the DCG trust to reduce their own audit work on the trust as part of the individual plan audit. The same rules for determining whether an individual plan is required to file as a large plan would apply to the plans within a DCG, including the ''80 to 120'' transition rule at 29 CFR 2520.103–1(d). Similarly, if finalized, the proposed change on using participants with account balances, rather than all eligible participants, to determine small plan status for general annual reporting purposes also would apply.

With respect to the condition prohibiting multiemployer plans and MEPs from being part of DCG reporting arrangements, the Departments do not believe that section 202 of the SECURE Act was focused on allowing groups of multiemployer plans or MEPs, which already file a single Form 5500 that covers all of the employers that participate in the plan, to file a single consolidated Form 5500 covering the group of multiemployer plans or MEPs. The Departments are also concerned that allowing a single consolidated Form 5500 in the case of such plans, for example, a group of multiemployer section 401(k) plans, could result in an undesirable reduction in transparency and financial accountability. Further, creating a consolidated report for such groups of plans would likely be much more complicated and costly than what is being proposed in this document. Nonetheless, the Departments acknowledge that such a limitation is not expressly set forth in section 202 of the SECURE Act, and, accordingly, solicits public comments on whether the final rule should include multiemployer plans and MEPs, and if so, what conditions should apply to DCG reporting arrangements that would include such plans.

3. Content Requirements for DCG Form 5500

The proposal also sets forth the content requirements for the consolidated Form 5500 return/report filed by the DCG reporting arrangement. Under the proposal, DCGs would not be permitted to file a Form 5500–SF. Rather, DCG reporting arrangements would be required to file a Form 5500 Annual Return/Report that includes largely the same information that large pension plans and other DFEs are generally required to file, except that a DCG reporting arrangement would also be required to include in its annual report a proposed Schedule DCG (described below) to report individual participating plan information for each plan that is a part of the DCG reporting arrangement. Specifically, the content of the DCG annual return/report would include a Form 5500 Annual Return/Report of Employee Benefit Plan and any statements or schedules required to be attached to the form for such entity, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule C (Service Provider Information), Schedule D (DFE/Participating Plan Information), Schedule G (Financial Transaction Schedules), Schedule H (Financial Information), Schedule R (Retirement Plan Information), Schedule DCG (Individual Plan Information), schedules described in § 2520.103–10(b)(1) and (b)(2), an IQPA audit report and the related financial statements covering the DCG trust, and, for DCG consolidated Form 5500 filings that are intended to cover large plans (generally those with 100 or more participants), an IQPA audit report and the related financial statements attached to the Schedule DCG for each such individual large plan. Financial statements include the financial statements of the trust, the notes to the financial statements and the schedules described in paragraph (b)(1) of § 2520.103–10.

Information reported on the various schedules to the Form 5500, other than the proposed Schedule DCG, would be reported in the aggregate. Thus, a Schedule A would be required for all insurance contracts that constitute one of the investments or investment alternatives available to all of the participants in a plan, regardless of whether certificates were to be issued to individual plans or participants upon selection of that option by a participant. The fees and commissions paid with respect to any insurance contracts available for investment by any of the plans/participants would be reported on the Schedule A. Similarly, a service provider to the trust and to each of the plans would be reported on Schedule C, even if the service provider did not actually provide services or charge fees to a particular plan because, for example, the service provider provided investment management services with respect to a particular investment option that was not selected by any of the participants in a particular plan. The $5,000 threshold would be based on the total amount received by the service provider. Reporting on Schedule C would still be required if the total amount was $5,000 or more, even if the amount paid by or charged against the assets of each the participating plans was less than $5,000 per plan. Reportable transactions on Schedule G would include any involving the assets of the trust and any parties in interest with respect to the trust. For reporting delinquent participant contributions on Schedule H, Line 4a, the Agencies would expect the DCG filing the annual report to identify the delinquent

participating employer in the attachment already required in the instructions.

The Departments expect that cost savings for plans relying on a DCG filing compared to plans filing separately would generally only begin to emerge when the DCG collectively exceeds an aggregate participant count of 100 participants. In other words, the Departments do not expect a DCG filing to provide meaningful cost savings for plans, as compared to filing their own annual report, in the case of DCG arrangements with an aggregate participant count of under 100 participants. Rather, the Departments expect in such cases that the individual plans would likely qualify for filing the Form 5500–SF and that they would likely find it more cost effective to file their own separate Form 5500–SF.[22] Accordingly, this proposal does not include an option under which such a ''small'' DCG could file as a small plan filer. The Departments solicit comments on whether stakeholders expect there to be ''small'' DGCs, whether a ''small'' DCG alternative should be made available, and what the content requirements for such an alternative should be, *e.g.,* whether the content of the ''small'' DCG annual return/report should include Schedule I instead of Schedule H, whether it should include the IQPA audit report and/or the schedules of assets, and whether it should include the Schedule C.[23]

4. Proposed Schedule DCG (Individual Plan Information)

Section 202(b) of the SECURE Act specifically provides that IRS and DOL may require the consolidated Form 5500 return/report filed by the DCG reporting arrangement to include any information regarding each plan in the group as IRS and DOL may determine necessary or appropriate for the enforcement and administration of the Code and ERISA. The proposed Schedule DCG would contain the plan level information needed by the IRS for administrating and enforcing tax laws passed by Congress and by the DOL for important Title I oversight functions, particularly with respect to large plans. A separate Schedule DCG would be required to be completed for each individual plan, similar to the requirement to complete a separate Schedule A for each insurance contract held by a plan or DFE filing the Form 5500. IRS examines individual plans, not groups of plans, to ensure that plan sponsors and/or employers comply with the tax laws governing retirement plans, and to help protect the retirement benefits of participants and beneficiaries. Thus, IRS requires information with respect to a plan's qualification, financial condition, and operation on a separate basis for each plan filing as part of a DCG. Individual plan financial information already reported on the Form 5500–SF is important for the DOL to continue to ensure that participants and beneficiaries of the individual plans participating in a DCG receive their promised benefits. The proposed Schedule DCG includes:

- Part I—DCG name and EIN/PN modeled on the similar plan-level information on other schedules to the Form 5500. Information in Part I must match the DCG information reported on Part II of the consolidated Form 5500.
- Part II—confirmation that the plan for which the Schedule DCG is being filed is a single employer plan (as noted above, MEPs and multiemployer plans may not participate in a DCG under the proposal) and, if applicable, identification of the plan as a collectively bargained plan.
- Part III—basic individual plan information, including the plan name, plan number, plan effective date, plan sponsor's name and address, plan sponsor's EIN, plan sponsor's telephone number, plan sponsor's business code, total number of participants, total number of active participants, number of participants with account balances, and number of participants who terminated employment during the plan year with accrued benefits that were less than 100% vested.
- Part IV—plan financial information, including total plan assets (including participant loans), total plan liabilities, net plan assets, contributions received or receivable in cash from the employer, participants, and others; noncash contributions and, total contributions; benefit payments, corrective distributions, and certain deemed distributions of participant loans, direct expense information, net income, and assets transferred to (from) plans.
- Part V—two-digit boxes for entry of all applicable codes in the List of Plan Characteristics Codes in the instructions to the Form 5500.
- Part VI—compliance questions relating to delinquent participant contributions, plan assets/liabilities transferred from the plan, indication of whether the plan is a defined contribution plan subject to section 412 of the Code, plan coverage and nondiscrimination information, and whether a plan is a pre-approved plan that received a favorable IRS Opinion Letter.
- Part VII—questions for large plans (generally plans covering 100 or more participants as of the beginning of the plan year) regarding the required individual IQPA report and financial statements that must be filed with the Schedule DCG filed for the participating large plan.

B. SECURE Act Section 101 Amendment to ERISA Section 103(g) Participating Employer Information

1. Participating Employer Reporting Under ERISA Section 103(g)

As discussed above, section 103(g) of ERISA, which was added to ERISA by the Cooperative and Small Employer Charity Pension Flexibility Act (CSEC Act) in 2014,[24] requires multiple employer plans to include with their annual reports ''a list of participating employers'' and, with respect to each participating employer, ''a good faith estimate of the percentage of total contributions made by such participating employers during the plan year.'' The DOL issued an interim final rule on November 10, 2014, which implemented the section 103(g) reporting requirements by requiring filers that check the ''multiple employer plan'' box on the face of the Form 5500 or the Form 5500–SF, and to attach a list of participating employers and a good faith estimate of the percentage of total contributions made by each participating employer during the plan year. [25] The 2014 interim final rule and the corresponding instructions further provided that unfunded or insured multiple employer welfare plans that are exempt under 29 CFR 2520.104–44 from filing financial statements with their annual report must attach a list of participating employers, but do not have to include an estimated amount of contributions from each employer.[26] Pursuant to the interim final rule, the section 103(g) reporting change became effective with the 2014 Form 5500 Annual Return/Report forms. The 2016 proposal on modernization of the Form 5500 included a proposal to finalize these changes.[27]

The DOL received four comments on the interim final rule and six additional

[22] Section III.A.1 of this preamble discusses the Departments' view that creating a consolidated group filing for employers required to file a Form 5500–EZ is similarly unlikely to generate administrative efficiencies for those employers, as compared to continuing to file separately.

[23] Since the aggregate participant count of the entire DCG would be less than 100, there could be no ''large plans'' participating in such a ''small'' DCG so the issue of an individual audit for a participating large plan would not arise.

[24] Public Law 113–97 (Apr. 7, 2014).

[25] 79 FR 66617 (Nov. 10, 2014).

[26] *See, e.g.,* 2020 Form 5500 instructions at 14; *see also* 2020 Form 5500–SF instructions at 8–9.

[27] 81 FR 47534, 47564–47565.

comments in connection with the Paperwork Reduction Act (PRA) notice associated with the publication of the interim final rule.[28] In addition, two comments on the 2016 proposal related to the proposal to finalize the 2014 interim final rule.[29] The central concerns of most of the commenters was that filing the participating employer list imposes material costs and burdens on multiple employer plans and that making the employer list public was not in the best interests of plan participants and beneficiaries. One commenter suggested that the DOL should not apply the section 103(g) reporting changes to defined contribution or welfare plans because ERISA section 103(g) was added as part of the CSEC Act, which generally focused on ERISA minimum funding requirements that are not applicable for the majority of defined contribution pension plans or to any group health and welfare plans. In the 2016 proposed rule as well as in the Field Assistance Bulletin No. 2019–01,[30] DOL stated its position that it believes the section 103(g) reporting requirements adopted by the 2014 interim final rule, which apply the new requirements to all multiple employer plans (defined benefit pension plans, defined contribution plans, and welfare plans), are a reasonable and appropriate way to implement Congress' directive in the CSEC Act. The information has proven useful to the DOL for its oversight functions for both MEPs and those MEWAs that file the Form 5500, regardless of the types of benefits provided by the MEWA. Before the DOL finalized the section 103(g) reporting requirements, the SECURE Act was enacted, which amended the original language in ERISA section 103(g), reaffirming that MEPs, including association retirement plans, PEOs, and the newly created pooled employer plans would have to report not just the existing identifying information, but also new financial information.

Specifically, section 101 of the SECURE Act amended ERISA section 103(g) by providing that annual reports for ''any plan to which [ERISA] section 210(a) applies (including a pooled employer plan)'' must include (1) a list of participating employers in the plan, a good faith estimate of the percentage of total contributions made by such participating employers during the plan year, and the aggregate account balances attributable to each employer in the plan (determined as the sum of the account balances of the employees of such employer (and the beneficiaries of such employees)); and (2) with respect to a pooled employer plan, identifying information for the person designated under the terms of the plan as the pooled plan provider. Although the SECURE Act added a specific reference to ERISA section 210(a), DOL believes that this reference was meant to emphasize that defined contribution multiple employer pension plans and different types of MEPs that became more accessible in recent years, such as association retirement plans, professional employer organization plans (PEOs), and the newly created pooled employer plan are required to comply with the participating employers reporting requirements, and not just defined benefit pension plans.

The SECURE Act reporting changes are effective for plan years beginning on or after January 1, 2021. In order to implement the SECURE Act reporting requirements on a timely basis, the Agencies are proposing that, for the 2021 plan year, MEPs (including pooled employer plans, association retirement plans, and PEOs) would be required to provide the participating employer information as a nonstandard attachment to the 2021 Form 5500 Annual Return/Report in a similar manner as currently required, and the content of the attachment would be updated to add the aggregate account balances attributable to each participating employer in the plan to the current requirement to provide identifying information and the percent of contributions by each participating employer. In addition, a MEP that is a pooled employer plan would be required to indicate on the nonstandard attachment for 2021 that it is a pooled employer plan and provide information similar to information required to be reported on a proposed Schedule MEP, as discussed below, for the 2022 and following plan years, including confirming that the entity identified as the plan sponsor and administrator in Part I of the Form 5500 is the pooled plan provider, and providing the ACK ID for the pooled plan provider's most recent Form PR. For the 2022 and following plan years, MEPs would be required to report the participating employer information in a standard format on a proposed new Schedule MEP, as discussed below.

2. Participating Employer Reporting for MEWAs

As discussed above, the SECURE Act amended ERISA section 103(g) by directing the reporting requirements specifically to multiple employer plans subject to ERISA section 210(a). The DOL continues to believe that receiving participating employer information from multiple employer welfare plans is important for oversight of such arrangements and should be continued. Even though the DOL originally relied on ERISA section 103(g) when it added the requirement for all multiple employer plans to provide the participating employer information, there are other rulemaking and reporting authorities that support continuing the reporting requirement for multiple employer welfare plans and extending it to non-plan MEWAs that file the Form M–1 (Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Other Entities Claiming Exception (ECEs) (Form M–1).

Based on the authority in ERISA sections 101(g), 505, and 734, the DOL in 2003 promulgated a regulation at 29 CFR 2520.101–2 that required the administrators of both multiple employer welfare plans and non-plan MEWAs that offer or provide coverage for medical benefits to file the Form M–1 on an annual basis (Form M–1 annual report) as well as upon occurrence of certain registration events (Form M–1 registration filing). Effective for plan years beginning on or after January 1, 2022, DOL is proposing to require MEWAs (plan and non-plan MEWAs) that offer or provide coverage for medical benefits to provide the participating employer information on the Form M–1 and not as an attachment to the Form 5500 Annual Return/Report. Specifically, new questions would be added to Form M–1 requiring MEWAs (plan and non-plan MEWAs) that offer or provide coverage for medical benefits to identify each participating employer in the MEWA by name and EIN and provide a good faith estimate of each participating employer's percentage of the total contributions made by all participating employer during the plan year. However, similar to the 2014 interim final rule issued under ERISA section 103(g), the Form M–1 proposal does not require contribution information from unfunded or insured MEWAs. Furthermore, the Form M–1 proposal would require contribution information on the Form M–1 annual report filing but not the Form M–1 registration filing. The DOL specifically solicits comments on whether the final rule should require participating

[28] *See* Proposed Extension of Information Collection Request Submitted for Public Comment; Revisions to Annual Return/Report—Multiple Employer Plans, 79 FR 66741 (Nov. 10, 2014).

[29] Comments are available on the DOL's website.

[30] In 2019, the DOL issued Field Assistance Bulletin No. 2019–01, which provided transition relief for MEPs that failed to file a complete and accurate participating employer information with their Form 5500 Annual Return/Report for the 2017 and prior plan years.

employer information on only the annual Form M–1 filing, and not on other M–1 required filings, in light of the fact that only annual information is required for plans reporting participating employer information on the Form 5500.

With respect to multiple employer welfare plans that do not offer or provide coverage for medical benefits, and thus are not required to file a Form M–1 (for example, life or disability benefits), section 103 of ERISA provides the DOL with the authority to require the plan administrator to furnish, as part of the Form 5500 annual report, the ''name and address of each fiduciary.'' *See* ERISA section 103(c)(2). In the DOL's view, the employer is acting as a fiduciary with respect to its decision to provide ERISA-covered benefits through a MEWA rather than through a single employer plan and also is a fiduciary for purposes of continuing to monitor the plan that it adopted.[31] Accordingly, the DOL is relying on ERISA section 103(c)(2) as its authority for requiring multiple employer welfare plans (other than those that file the Form M–1) to continue reporting the participating employer identifying information, and unless unfunded or insured, a good faith estimate of each participating employer's percentage of the total contributions made by all participating employer during the plan year.[32] As is currently required for such plans, the information would continue to be filed as an attachment to the Form 5500 Annual Return/Report. MEWAs, however, whether those reporting on the Form 5500/Form 5500–SF or the Form M–1, would not be required to provide the new aggregate account balances information that was added by the SECURE Act to section 103(g).

For the 2021 plan year, pending the implementation of the Form M–1 changes, all plan MEWAs would continue to provide participating employer information as a nonstandard attachment to the 2021 Form 5500 Annual Return/Report in a similar manner as currently required.

The proposal, by transferring the participating employer information from the Form 5500 Annual Return/Report to the Form M–1 for MEWAs that offer or provide coverage for medical benefits and continuing to require reporting of participating employer information on the Form 5500 Annual Return/Report for plan MEWAs that provide other benefits, would enable the DOL to receive such information from both plan and non-plan MEWAs, regardless of how they are funded or structured. The DOL and other users of the Form M–1 data (*e.g.,* state insurance regulators) would have access to updated and current lists of participating employers because the Form M–1 must be filed annually as well as upon the occurrence of certain registration events (30 days prior to MEWAs operating in any state or expanding their operations into an additional state; and within 30 days of a merger, material change, or a participant increase of 50% or more).

C. Proposed Form 5500-Schedule MEP (Multiple Employer Pension Plan Information) and Requirement That MEPs (Including Pooled Employer Plans) File the Form 5500 and not the Form 5500–SF

The proposal would add a new Schedule MEP (Multiple Employer Pension Plan Information) to the Form 5500 Annual Return/Report that would be completed by MEPs. The proposal also would add a limited number of additional data items elsewhere on the Form 5500 relevant to MEPs. The proposed Schedule MEP would provide a unified vehicle to report information related to new SECURE Act provisions, including information unique to MEPs. The first section, Part I, like the other schedules to the Form 5500, would require filers to enter identifying information (which must match the information entered on the Form 5500) and to indicate the plan type by checkbox. The instructions would provide general definitions for purposes of annual reporting for the various categories of pension plans that must complete the Schedule MEP. This would include different types of MEPs (group or association retirement plans within the meaning of 29 CFR 2510.3–55(b) (association retirement plans), professional employer organization plans within the meaning of 29 CFR 2510.3–55(c) (PEO plans), pooled employer plans within the meaning of ERISA section 3(43), and other MEPs covering the employees of two or more employers that are not single or multiemployer plans for annual reporting purposes). Multiemployer plans, as defined under section 3(37) of ERISA, would not be required to complete the Schedule MEP.[33]

Part II of the proposed Schedule MEP would be a repeating line item on which all MEPs would report information under ERISA section 103(g) regarding participating employers, including employer/plan sponsor name, EIN, and the percentage of total contributions to the plan or arrangement by each participating employer, and the aggregate account balances information the SECURE Act added to ERISA section 103(g).[34] That information is currently collected for MEPs as a non-standard attachment to the Form 5500 and Form 5500–SF.[35] Pursuant to the SECURE Act, a new data element would be added to require reporting of the aggregate account balances for each participating employer in the MEP.

Part III would be completed by pooled employer plans. A pooled employer plan would be required to indicate whether the pooled plan provider operating the plan (identified on the Form 5500 for each of the pooled employer plans it operates as both the plan sponsor and the plan administrator) has complied with the registration requirements for pooled plan providers under section 3(43) and 3(44) of ERISA by filing a Form PR, in accordance with that form's instructions.[36] The pooled employer plan would be required to provide the ''ACK ID''—the acknowledgement code generated by the system in response to a completed filing—for the most recent

[31] *See* Advisory Opinion Letter 2007–06A (Aug. 16, 2007) (''decisions regarding the method through which benefits are to be paid under an employee welfare benefit plan, including the selection of an insurer and the negotiation of the terms of any contractual arrangement obligating the plan, are matters that generally are subject to the fiduciary responsibility provisions of Title I of ERISA''.); Information Letter to Diana Ceresi (Feb. 2, 1998) (''when the selection of a health care provider involves the disposition of employee benefit plan assets, such selection is an exercise of authority or control with respect to the management and disposition of the plan's assets within the meaning of section 3(21) of ERISA, and thus constitutes a fiduciary act . . .''); *See* also Advisory Opinion Letter 2018–01A (Nov. 5, 2018) (In the context of a pension plan rollover service provider, not covered by Title 1 of ERISA, ''When plan sponsors or other responsible fiduciaries choose to have a plan participate in the RCH Program, they are acting in a fiduciary capacity, and would be subject to the general fiduciary standards and prohibited transaction provisions of ERISA in selecting and monitoring the RCH Program.'')

[32] Similar to the 2014 interim final rule issued under ERISA section 103(g), such multiple employer welfare plans that are unfunded or insured and exempt under 29 CFR 2520.104–44 from filing financial statements with their annual report will continue to be required to attach a list of participating employers, but do not have to include the contribution information. *See, e.g.,* 2020 Form 5500 instructions at 14; *see also* 2020 Form 5500–SF instructions at 8–9.

[33] Multiemployer defined pension benefit plans are required to provide, on Form 5500, Schedule R (Retirement Plan Information), identifying information and the percentage of contributions for those plans that are five percent or more contributors for the plan year being reported.

[34] As discussed above, MEWAs would report the participating employer information either as an attachment to the Form 5500 or on the Form M–1.

[35] The total contributions are the amount reported on Form 5500, Schedule H, line 2(a)(3) or the total of lines 8a(1), 8a(2), and 8a(3) on the Form 5500–SF.

[36] *See* Form PR and its instructions, available at *www.efast.dol.gov.*

Form PR submitted.[37] Pooled employer plans would also be required to indicate whether certain services were provided by an affiliate, and, if relying on a prohibited transaction exemption for the use of an affiliate, to identify the prohibited transaction (whether a class or individual) exemption.

The DOL, through rules and other initiatives, has pursued and required improvements in fee transparency to ensure that ERISA plan fiduciaries and plan participants are effectively informed about service provider fees and expenses, including cost and performance information of designated investment alternatives under the plan. These considerations are particularly important in the case of pooled employer plans and MEPs given their structure and the roles that traditional service providers end up playing as plan sponsors and plan administrators. Accordingly, comments are specifically solicited on whether more specifically tailored questions should be added, in addition to those already on the Schedules C and H, to report fee and expense information on pooled employer plans and other MEPs, including information on how fees and expenses are allocated among participating employers and among covered participants and beneficiaries.

Further, the proposal would require all MEPs, similar to the current rule for multiemployer plans and the proposed rule for DCGs, to file the Form 5500 regardless of whether they would otherwise be eligible to file the Form 5500–SF. Making the filings across plan types more uniform would enable more consistent and informed oversight of collective retirement arrangements. Small MEPs would have the same simplified Form 5500 reporting as small pension plans, including MEPs, that currently file the Form 5500. They would be able to file the Schedule I instead of the Schedule H and its financial attachments, would not be required to complete the Schedule C or Schedule G, and would be able to file without having an IQPA audit and attaching an IQPA report.

D. Improving Usability of Data Collection for Schedule H, Line 4i Schedules of Assets

By their nature, MEPs have the potential to build up a substantial amount of assets quickly and the effect of any abusive schemes on future retirement distributions may be hidden or difficult to detect for a long period. The DOL is aware that MEPs could be the target of fraud or abuse for this reason. Although DOL is not aware of direct information indicating that the risk for fraud and abuse is greater for MEPs than for other defined contribution pension plans, a key component of the proposal is to make the financial information reported on the Form 5500 Annual Return/Report more data mineable and accessible for enforcement and analysis purposes. The DOL does not believe it would be sensible to limit this aspect of the proposal to just pooled employer plans and other MEPs because, although an important data improvement for MEPs, the need for more relevant and comparable financial information extends to defined contribution and defined benefit pension plans generally. Reports from GAO, the DOL—Office of Inspector General, the ERISA Advisory Council, and the Treasury Inspector General for Tax Administration (''TIGTA'') have focused on the need for increased transparency and accountability generally in connection with employee benefit plan investments in hard-to-value and alternative assets and those held through pooled investment vehicles. It also would be confusing and inefficient to try to adopt these kinds of financial reporting improvement just for MEPs or for certain types of MEPs.

Mandatory e-filing, which was implemented for the 2009 form filing year, changed both the regulated community's and the government's ability to use the Form 5500 Annual Return/Report data. The data sets developed from e-filing information have been helping researchers, businesses, and other plan professionals.[38] The Form 5500 Annual Return/Report data sets can be one of the major building blocks for a private organization to use in developing information for employees and employers on plan administration. Currently, however, the line 4i attachments to Schedule H (Schedule of Assets Held at End of Year, Schedule of Assets Acquired and Disposed of Within Year and the Schedule of Reportable Transactions) are difficult to search, filter, aggregate, and analyze because they are not filed in a standardized electronic format. As a result, the Agencies, policymakers, employers, labor organizations, participants and beneficiaries, and the public have difficulty accessing key information about plan investments. This proposal to establish a standardized electronic filing format for the Schedule H, line 4i Schedules of Investments is also intended to be responsive to the OIG's recommendation that the Agencies create a searchable reporting format for the Schedule H, line 4i Schedules of Assets and otherwise increase the accessibility of Form 5500 Annual Return/Report information, particularly information on hard-to-value assets and multiple-employer plans. *See DOL–OIG EBSA Needs to Provide Additional Guidance and Oversight to ERISA Plans Holding Hard-To-Value Alternative Investments,* at 17. See also *Private Pensions: Targeted Revisions Could Improve Usefulness of Form 5500 Information,* at 37; see also *U.S. Gov't Accountability Office, GAO–12–665, Federal Agencies Should Collect Data and Coordinate Oversight of Multiple Employer Plans* (2012), at 30.

Schedule H, line 4i would be separated into two elements—line 4i(1) would ask whether the plan held assets for investment at the end of the year; line 4i(2) would ask about assets acquired and disposed of during the plan year. The information to be collected as part of the schedules would be largely unchanged, but some adjustments are being proposed to improve the consistency and quality of the data. The proposal clarifies conventions for identifying filers by name and identifying number(s).[39] The proposal would require plans to use legal entity and other industry and regulatory identifiers for investment assets whenever possible. Check boxes are also being added for participant directed individual account plans to identify investments that are designated investment alternatives and qualified default investment alternatives and to require entry of the total annual

[37] The instructions to the Form PR advise the pooled plan provider that it must keep, under section 107, the electronic receipt for the Form PR filing as part of the records of the pooled employer plans operated by the pooled plan provider.

[38] EBSA is responsible for collecting the Form 5500 Annual Return/Report, in part, to fulfill the statutory requirements under Sections 104 and 106 of ERISA, which require that DOL make annual reports filed under Title I of ERISA available to the public. EBSA also makes the Form 5500 filings and data available to the public under the Freedom of Information Act (FOIA), 5 U.S.C. 552. EBSA fulfills its responsibilities by making the Form 5500 Annual Return/Report data available for downloading in bulk. See *http://www.dol.gov/ebsa/foia/foia.html.* These bulk data files, which EBSA updates at the end of each month with the Form 5500 Annual Return/Report data collected during that month, are downloaded by private-sector organizations that, in some cases, also make the data available on the internet. Thus, most returns/reports are currently open to public inspection, and the contents are public information subject to publication on the internet.

[39] These changes are also intended to address concerns raised by the GAO in recommending that ''the Agencies develop a central repository for EIN and Plan Numbers (PNs) for filers and service providers to improve the comparability of form data across filings.'' *GAO Private Pensions: Targeted Revisions Could Improve Usefulness of Form 5500 Information,* at 37.

operating expenses for the investments expressed as a percentage of assets that was furnished to participants and beneficiaries in their most recent ''404a–5 statement.'' [40] With the expected increase in employers choosing to offer retirement benefits through MEPs and DCGs, instead of stand-alone plans that file their own annual return/report, and the requirement for DCGs to provide the same investments and investment alternatives, these changes are intended to help the Agencies, employers, and other interested stakeholders compare plan participation, investment options, and investment performance from year-to-year.

E. Schedules MB, SB and R—Proposed Modifications and Additions to Information Reported

As described more fully below, the Agencies propose adding new questions to the Form 5500 Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information), Schedule SB (Single-Employer Defined Benefit Plan Actuarial Information), and Schedule R (Retirement Plan Information), and modifying the demographic and benefit attachment requirements to enable the Agencies to project more precisely defined benefit pension plans' and insurance programs' liabilities. Also for multiemployer defined benefit pension plans, among other changes, the Agencies propose identifying a larger number of contributing employers. For both single-employer and multiemployer defined benefit pension plans, the Agencies propose the option to provide certain required attachments in a spreadsheet file to make it easier for the Agencies to access the information.

1. Schedule MB Modifications

Currently, Schedule MB requires that if any of the employer contributions reported in line 3 include amounts owed for withdrawal liability, an attachment must be provided listing the total withdrawal liability amounts and the dates such amounts were contributed. The Agencies propose modifying the line 3 instructions to require an attachment that breaks down the total withdrawal liability amounts by date, separately specifying the periodic withdrawal liability amounts and lump sum withdrawal liability amounts.

Currently, line 6 of Schedule MB requires filers to provide information about the actuarial assumptions used to determine plan liabilities. The Agencies propose adding a new requirement for plans that assess withdrawal liability to an employer during the plan year to report the interest rate used to determine the present value of vested benefits for withdrawal liability determinations. This information would be reported in a new line, which would become line 6f. In addition, the Agencies propose modifying the questions related to the line 6 ''expense load'' to better align with the various ways multiemployer plans incorporate expense loads into their calculations. Filers would be required to indicate if an expense load is included in normal cost and, if so, whether it is determined as a percentage of normal cost, a dollar amount that varies from year to year, or something else. As part of the modification, the Agencies propose moving the expense load from line 6e to a new line 6i and to revise the instructions accordingly.

In addition, the Agencies propose modifying line 8 of Schedule MB by requiring additional information about demographics, benefits, and contributions as described below. As is the case currently with respect to line 8, these requirements would apply only to PBGC-insured multiemployer plans with 500 or more total participants as of the beginning of the plan year.

- *Benefit Projections*—Currently, such plans are required to attach a projection of benefits expected to be paid in each of the next ten years (see line 8b(1)).[41] The Agencies propose modifying the format of the attachment to show the benefit projection broken down into three categories based on the participant's or beneficiary's status on the valuation date (*i.e.,* active, terminated vested, in pay status). In addition, the projection period would be extended from 10 to 50 years. It is the Agencies' understanding that almost all valuation software automatically generates these numbers and that it takes the same amount of effort to project 50 years as it does to project 10 years.
- *Contribution Projections*—The Agencies propose adding a new requirement that such plans provide, as an attachment, a 10-year projection of employer contributions and withdrawal liability payments. A new line, line 8b(3), would be added to Schedule MB where the filer would report whether the projection is required. As is the case with the benefit projection attachments, the instructions would provide the required format for the attachment.
- *Average age/benefit*—The Agencies propose requiring such plans to report the average age and average monthly benefit separately for terminated vested participants and retired participants and beneficiaries receiving payments. This information would be provided directly on Schedule MB, in new line 8b(4).

The Agencies also propose a change to the ''age/service'' scatter attachment which is currently required for PBGC-insured multiemployer plans with active participants, regardless of the number of participants. Currently, the scatter shows, for each ''attained age'' and ''years of credited service'' grouping of active participants, the number of active participants, and if the total number of active participants at the beginning of the plan year is 1,000 or more, (1) for plans that use compensation to determine benefits, the average compensation, and (2) for cash balance plans, the average cash balance account (see line 8b(2)). The Agencies propose modifying the age/service scatter by deleting the required information related to cash balance plans and adding a requirement to report average accrued monthly benefits as of the valuation date for each grouping (for plans with 1,000 or more active participants at the beginning of the year). As is the case with respect to average compensation, the accrued benefit information would not be required for any age/service combination that contains fewer than 20 participants.

The Agencies also propose clarifying the line 4f instructions and Schedule language concerning when (or if) plans in critical status or critical and

[40] See 29 CFR 2550.404a–5. The DOL published a final rule in 2012 that was designed to help America's workers manage and invest the money they contribute to their 401(k)-type pension plans. The rule requires that workers in this type of plan are given, or have access to, the information they need to make informed decisions, including information about fees and expenses; the delivery of investment-related information in a format that enables workers to meaningfully compare the investment options under their pension plans; that plan fiduciaries use standard methodologies when calculating and disclosing expense and return information so as to achieve uniformity across the spectrum of investments that exist among and within plans, thus facilitating ''apples-to-apples'' comparisons among their plan's investment options; and a new level of fee and expense transparency. Requiring the total annual operating expenses from those statements to be included on the plan's Form 5500 is intended to help further that objective by allowing third-party data aggregators to build tools that will help employers, participants and beneficiaries, the Agencies, and other interested members of the public evaluate and monitor investment alternatives being made available for America's workers to save to their retirement.

[41] The current instructions provide that the line 8b(1) attachment is required for plans with 500 or more participants as of the valuation date, not as of the beginning of the plan year. The Agencies are proposing to change that to ''the beginning of the plan year'' because the only participant count reported on Schedule MB is the count at the beginning of the plan year (*i.e.,* line 2b(3)(c), column 1) and because doing so is consistent with another Schedule MB requirement, See instructions for line 8b(2).

declining status are projected to emerge or become insolvent, as filers' previous responses indicate they may have been confused as to how to fill out line 4f correctly.

2. Modifications to Schedule SB

The Agencies propose making the Schedule SB (actuarial schedule), line 26 reporting requirements about demographics and benefits similar to the requirements for PBGC-insured multiemployer plans. Consistent with the requirements for PBGC-insured multiemployer plans, the new single-employer plan requirements would apply only to plans with 500 or more total participants. However, because the only participant count information reported on Schedule SB is as of the valuation date, for single-employer plans, participants are counted as of the valuation date for this purpose instead of as of the beginning of the plan year. Such plans would be required to attach a projection of benefits expected to be paid in each of the next 50 years broken down into three categories based on the participant's or beneficiary's status on the valuation date (*i.e.,* active, terminated vested, in pay status). The instructions would provide the requirements for the attachment's format. The Agencies are also proposing that these plans report the average age and average monthly benefit separately for terminated vested participants and retired participants and beneficiaries receiving payments. As discussed above, the Agencies do not believe the benefit projection requirement would be burdensome for such single-employer plans, as almost all valuation software automatically generates these numbers.

To facilitate these changes, the Agencies propose rearranging Schedule SB line 26. Currently, line 26 relates only to the ''age/service'' scatter of active participant data required to be attached to Schedule SB for PBGC-insured single-employer plans with active participants. The Agencies propose changing line 26 into a three-part question (26a, 26b, and 26c). Line 26a would be the current line 26. New line 26b would require PBGC-insured single-employer plans with 500 or more total participants as of the valuation date to attach a projection of expected benefit payments. New line 26c would be the line for plans to report average age and average monthly benefit information.

The Agencies propose modifying Part IX of the Schedule SB, and its instructions, so that it relates to elective funding relief provided under the American Rescue Plan (ARP) Act of 2021 instead of elective funding relief provided under the Pension Relief Act of 2010 (PRA 2010). The PRA 2010 information is no longer needed because the ARP Act reduces to zero all shortfall amortization bases, including amortization bases established pursuant to the PRA 2010 elective funding relief. As modified, plan sponsors of single-employer defined benefit plans that elect to have the ARP Act extended amortization rule apply before the 2022 plan year would be required to report the first plan year to which the extended amortization rule applies.

3. Modification to Schedule R Reporting Requirement

The Agencies propose modifying Schedule R's Part V, line 13 requirement that multiemployer defined benefit pension plans subject to minimum funding standards report identifying information about any participating employer whose contributions to the plan account for more than five (5) percent of the total contributions for the year. The proposed change would require that plans report identifying information about any participating employer who either (1) contributed more than five percent of the plan's total contributions or (2) was one of the top ten highest contributors. This will ensure that reported data represents a reasonable sampling of contributors.

4. Change in Format for Certain Schedule MB and SB Attachments

EFAST filers currently file Form 5500 attachments as PDF and plain text (TXT) files. A PDF file is required only if the attachment is supposed to be signed. TXT attachments are rarely provided. Many attachments include a lot of numbers (*e.g.,* benefit projections, age/service scatters) that are reported in tables. These numbers have to be extracted out of PDF tables and entered into databases or spreadsheets before the Agencies can use the information for various projects, studies, etc. This is costly and inefficient. It would be more efficient for the Agencies if this information was instead provided by filers in a tabular format (spreadsheet). Therefore, the Agencies propose modifying the instructions to allow and suggest (but not require) that certain attachments be provided in a tabular format (spreadsheet) such as CSV or XLS rather than PDF or TXT formats. The attachments affected by this change are:

Attachment	Schedule MB	Schedule SB
Schedule of Projection of Expected Benefit Payments	Line 8b(1)	Line 26b.
Schedule of Active Participant Data (*i.e.,* Age/service scatter)	Line 8b(2)	Line 26a.
Withdrawal Liability Amounts	Line 3	N/A.
Schedule of Projection of Employer Contributions and Withdrawal Liability	Line 8b(3)	N/A.

Because much of this information is automatically generated by valuation software, the Agencies expect that this option may simplify the process for preparing attachments as well.

F. Internal Revenue Code-Based Questions for the 2022 Form 5500s

Prior to 2009, Schedule E, ESOP Annual Information, Schedule P, Annual Return of Fiduciary of Employee Benefit Trust, and Schedule T, Qualified Pension Plan Coverage Information, were required as part of the annual return under section 6058(a) of the Code and associated regulations, but they were not information collections of the DOL or the PBGC. Beginning in 2009, DOL mandated electronic filing of Form 5500, Annual Return/Report of Employee Benefit Plan, and Form 5500–SF, Short Form Annual Return/Report of Small Employee Benefit Plan. Limitations on the IRS' authority to require electronic filing of annual returns resulted in the removal of the ''IRS-only'' schedules from the Form 5500 filing requirements. See Code section 6011(e).

The 2011 report from the TIGTA entitled ''The Employee Plans Function Should Continue Its Efforts to Obtain Needed Retirement Plan Information'' notes that the lack of information contained on Schedules E, P, and T can negatively impact the IRS's ability to effectively focus on specific factors of noncompliance when selecting retirement plans for examination. This lack of information may result in the IRS selecting relatively compliant plans, which increases the burden on these plans and affects the IRS's ability to identify and focus on potentially noncompliant plans. Additionally, the Employee Plans (EP) function has

focused its examination strategy on identifying plans with non-compliance by using compliance strategies and data analysis. Compliance strategies use agents' experience to identify certain types of plans where EP sees numerous qualification failures. EP uses data analysis by identifying certain responses to questions on the Form 5500 that indicate that a plan may be non-compliant.

Rather than reinstating the Schedules E, P, and T, the IRS is proposing to add new questions to the 2022 Form 5500 that are designed to assist the IRS in identifying plans that are non-compliant relating to Code section 410(b) coverage, Code section 401(a)(4) non-discrimination, and Code section 401(k) non-discrimination testing. Additionally, the IRS is proposing to add a question that will help it identify whether adopters of pre-approved plans have been updated timely for changes in the law. DCGs would report this information at the plan level as part of the Schedule DCG.

Specifically, the proposal would add a nondiscrimination and coverage test question to Form 5500 and Form 5500–SF that was on the Schedule T before it was eliminated. The question asks if the employer aggregated plans in testing whether the plan satisfied the nondiscrimination and coverage tests of Code sections 401(a)(4) and 410(b). A plan that is aggregated with another plan to pass either nondiscrimination or coverage testing generally has more issues that are technically complicated and raise the possibility of non-compliance. Adding this question will allow EP to identify these plans for examination over plans that are likely more compliant with the law. This question is also helpful when performing pre-examination analysis and allows the IRS to narrow any inquiries for information that is requested from the plan sponsor. The restoration of this question also reflects the elimination of optional coverage and nondiscrimination demonstrations in the IRS determination letter process. *See* Rev. Proc. 2012–6, 2012–1 I.R.B. 235, and Announcement 2011–82, 2011–52 I.R.B. 1052.

The proposal would add a question to Form 5500 and Form 5500–SF, for section 401(k) plans, asking whether the plan sponsor used the design-based safe harbor rules or, if applicable, the ''prior year'' or ''current year'' ADP test. ADP testing and nondiscrimination are significant compliance issues for section 401(k) plans. For example, a plan that performs prior year or current year ADP testing is more likely to have compliance issues than a plan with a designed-based safe harbor. Adding this question will allow EP to identify for examination section 401(k) plans that use ADP testing over plans that have designed-based safe harbors. This question will also help the IRS perform pre-examination analysis and, for design-based safe harbor plans, verify whether (1) allocations of required safe harbor contributions comply with the terms of the plan, and (2) proper notice requirements are satisfied on an annual basis.

The proposal would add a question to Form 5500 and Form 5500–SF,[42] asking whether the employer is an adopter of a pre-approved plan that received a favorable IRS Opinion Letter, the date of the favorable Opinion Letter, and the Opinion Letter serial number. This question will help the IRS identify whether a plan sponsor has adopted a pre-approved plan and to determine whether the plan was adopted timely in accordance with the Code section 401(b) remedial amendment period. This question will also assist the IRS in determining whether to select a plan for examination as a late amender for changes in the law.

Finally, the proposal would add a new checkbox F to Form 5500–EZ, Part I, asking whether a filer is required to file Form 5500–EZ electronically pursuant to Treas. Reg § 301.6058–2. A filer who has to file at least the applicable number of returns with the IRS during a calendar year generally must file Form 5500–EZ electronically under EFAST2. The applicable number is 10 for returns required to be filed during calendar years after 2022. If a filer is required to file Form 5500–EZ electronically, but fails to do so, the filer is deemed to have failed to file Form 5500–EZ. This question will assist IRS in determining if a filer is in compliance with IRS mandatory electronic filing rules, in the event a paper Form 5500–EZ is filed.

G. Change to Participant-Count Methodology for Determining Independent Qualified Public Accountant Audit Requirement for Individual Account Plans

The Agencies are proposing to change the rules for determining when a defined contribution pension plan is exempt from the requirement to include an IQPA report with its annual return/report filing. Currently, the plan size measure for the IQPA audit requirement is based on the total number of participants at the beginning of the plan year, including those eligible to elect to have contributions made under a section 401(k) qualified cash or deferred arrangement even if they have not elected to participate and do not have an account balance in a section 401(k) or 403(b) plan. Some stakeholders have pointed out that the use of this definition for the audit threshold may result in two plans with the same number of active participants, *e.g.,* 85 account holders, with one subject to an audit and the other not based on the number of non-participating but eligible employees of the plan sponsor. They questioned the policy basis for such a difference in application of the audit requirement. Further, under this definition, some stakeholders have suggested that section 112 of the SECURE Act could make it even more likely that a plan with a small number of active participants may be required to bear the cost of an audit based on eligible but not participating employees being counted toward the audit threshold. Specifically, because section 112 provides that long-term, part time workers that have reached the plan's minimum age requirement and worked at least 500 hours in each of three consecutive 12-months period must be permitted to make elective contributions to a section 401(k) qualified cash or deferred arrangement for plan years beginning on or after January 1, 2024, there could be more employees eligible to participate that elect not to do so. These eligible employees who are not active participants would still be impacting the threshold for determining whether the plan would have to file as a large plan.[43]

To address these issues, the Agencies are proposing to add to the Form 5500 and Form 5500–SF a new question for defined contribution pension plans only, asking for the number of participants with account balances at the ''beginning of the year,'' in addition to the current end-of-year count for defined contribution pension plan participants with account balances. Defined contribution pension plans would determine whether they have to file as a large plan and whether they have to attach an IQPA report and audited financial statements based on the number of participants with account balances as of the beginning of the plan year, as reported on the face of the Form 5500 or Form 5500–SF. To avoid circumstances in which a beginning-of-year count would result in an inappropriate exclusion of large plans

[42] IRS will separately make a parallel update to the Form 5500–EZ, which is solely in the jurisdiction of the IRS.

[43] The Agencies proposed a similar change in 2016 and received few comments on that aspect of the proposal. 81 FR 47534 (Jul. 16, 2016).

from the audit requirement, for first plan year filings, the participant count for this purpose would exclude only plans that have fewer than 100 participants with account balances both at the beginning of the first plan year and the end of the first plan year.[44] Thus, under the proposal, the determination would be based on the number of participants with account balances as of the beginning of the plan year (as reported on proposed line 6g(1) of the Form 5500 or line 5c(1) of the Form 5500–SF), except that the determination for first plan year filings would be based on the number of participants with account balances both at the beginning of the plan year and at the end of the plan year (as reported on proposed line 6g(2) of the Form 5500 and line 5c(2) of the Form 5500–SF).

H. Miscellaneous and Conforming Changes for Forms and Instructions

Various other technical, formatting, and conforming changes to the forms, schedules, and instructions are being proposed as part of the substantial restructuring of the Form 5500 Annual Return/Report described in this notice. For example, to implement the proposed Schedule MEP and Schedule DCG, the proposal includes conforming changes to other parts of the forms, schedules, and instructions. The instructions for what constitutes a multiple employer plan for purposes of the Form 5500 would generally be left unchanged, but conforming changes would be made throughout the instructions as necessary to reference the Schedule MEP and pooled employer plans for pension plans. The instructions would also be amended to reflect the transferring of the participating employer information from the Form 5500 Annual Return/Report to the Form M–1 for MEWAs that offer or provide coverage for medical benefits, and continued reporting of participating employer information on the Form 5500 Annual Return/Report as an attachment for plan MEWAs that provide other benefits. The instructions for Part I, DFE box, would be updated to add a code for DCGs, which would be instructed to check the DFE box, enter the correct code, and attach the proposed Schedule DCG. The proposed Schedule MEP and Schedule DCG would be added to the list of pension schedules. DCG filers would have to check that they are adding the Schedule DCG and enter the number of Schedules DCG attached. Other conforming changes would also be made throughout the instructions as necessary to reference DCGs and Schedule DCG. The DOL's reporting regulation at 29 CFR 2520.103–1(c)(2)(ii) and the Form 5500–SF instructions would be amended to add MEPs and DCGs to those types of filers that are not permitted to file a Form 5500–SF, but must instead file the Form 5500, with all required schedules and attachments. The instructions would be revised to state that pooled employer plans and DCGs would not report investment assets aggregated into master trust investment accounts (MTIAs) because the purpose of the MTIA reporting structure is to provide a financial reporting structure for groups of affiliated plans (*e.g.,* separate plans of controlled group members) that utilize master trusts for the collective investment of the assets of the affiliated plans. The Departments do not believe that separate pooled employer plans and DCGs are ''affiliated'' in the way that was envisioned for master trust reporting by plans and may in fact create an overly complex and undesirable lack of transparency if used in the case of pooled employer plans and DCGs.

The proposal would also add new breakout categories to the ''Administrative Expenses'' category of the Income and Expenses section of the Schedule H balance sheet. The Agencies have determined that to get a better picture of plan expenses, particularly those related to service providers, more detail in this category is warranted. Accordingly, data elements would be added for ''Salaries and allowances,'' ''Independent Qualified Public Accountant (IQPA) Audit fees,'' ''Recordkeeping and Other Accounting Fees,'' ''Bank or Trust Company Trustee/Custodial Fees,'' ''Actuarial fees,'' ''Legal fees,'' ''Valuation/appraisal fees,'' and ''Trustee fees/expenses (including travel, seminars, meetings.'' Other than IQPA Audit Fees and Bank or Trust Company Trustee/Custodial Fees, these questions were on the Form 5500 prior to 1999.[45] As noted above in connection with pooled employer plans and MEPs, transparency and improved reporting of fees and expenses is an ongoing objective for the DOL and an important goal for continuing to improve the Form 5500 as a tool for financial transparency and accountability among employee benefit plans. Accordingly, the agencies specifically request comments on whether the final rule should require more detailed reporting regarding fee and expense information on the Form 5500. Useful comments would include, for example, suggestions on how to improve reporting of direct and indirect service provider compensation, generally and in particular with respect to pooled employer plans, other MEPs, and DCG reporting arrangements (including information about how the fees and expenses are allocated among participating plans, employers, and plan participants and beneficiaries, as applicable). Another example of an area of interest on fee information is whether the Form 5500 would be an appropriate vehicle for collecting information on fees charged to participants or alternate payees by a retirement plan—including plan service provider fees the plan passes on to participants—for review and qualification of domestic relations orders.[46]

The proposal would also amend the Form 5500 instructions to make explicit that the pooled plan provider operating the pooled employer plan must report the same identifying information—*i.e.,* name and EIN for itself, identified affiliates and other service providers, and trustees—on the Form PR for the pooled plan provider and on the Forms 5500 for every pooled employer plan the pooled plan provider operates. The instructions to the new Form PR have parallel instructions. The proposal would also amend the Form 5500 and Form 5500–SF instructions and make conforming changes to the other parts of the forms, schedules, and instructions to implement the proposed changes described above to the participant count methodology for individual account plans for determining whether such plans have to file as a large plan and whether they have to attach an IQPA report.

IV. Paperwork Reduction Act Statement

As part of continuing efforts to reduce paperwork and respondent burden, the general public and Federal agencies are invited to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data will be provided in the

[44] This would not otherwise change how participants are counted for Form 5500 reporting purposes.

[45] *See* 1998 Form 5500, line 32(g).

[46] See Government Accountability Office (GAO) Report GAO 20–541, ''Retirement Security: DOL Could Better Inform Divorcing Parties About Dividing Savings,'' which recommended that ''EBSA should explore ways to collect information on fees charged to participants or alternate payees by a retirement plan—including plan service provider fees the plan passes on to participants—for review and qualification of domestic relations orders and evaluate the burden of doing so. For example, DOL could consider collecting fee information as part of existing reporting requirements in the Form 5500.''

desired format, reporting burden (time and financial resources) will be minimized, collection instruments will be clearly understood, and the impact of collection requirements on respondents is properly assessed. Currently, the DOL is soliciting comments concerning the proposed revisions of the Form 5500 Annual Return/Report, Form M–1 and Summary Annual Report, which are information collection requests subject to the PRA. A copy of the ICRs may be obtained by contacting the person listed in the PRA Addressee section below. The DOL has submitted a copy of the proposed revisions to the Office of Management and Budget (OMB) in accordance with 44 U.S.C. 3507(d) for its review of the DOL's information collection. The IRS and the PBGC intend to submit separate requests for OMB review and approval based upon the final forms revisions. The DOL and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information will have practical utility;
- Evaluate the accuracy of the estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503 and marked ''Attention: Desk Officer for the Employee Benefits Security Administration.'' Comments can also be submitted by Fax: 202–395–5806 (this is not a toll-free number), or by email: *OIRA_submission@omb.eop.gov*. OMB requests that comments be received by October 15, 2021, which is 30 days from publication of the proposed rule to ensure their consideration.

PRA Addressee: Address requests for copies of the ICR to James Butikofer, Office of Regulations and Interpretations, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N–5655, Washington, DC 20210. Email: *ebsa.opr@dol.gov*. ICRs submitted to OMB also are available at *http://www.RegInfo.gov*.

Form 5500 ICR: As described below, DOL is requesting a new OMB Control Number for this collection. The request for a new control number is for administrative reasons only. The DOL is currently in the process of requesting an extension for OMB Control Number 1210–0110, Annual Information Return/Report of Employee Benefit Plan. Once all of the outstanding actions are complete, the DOL intends to submit a nonmaterial change request to transfer the burden from the new ICR to the existing OMB control number for the Annual Information Return/Report of Employee Benefit Plan (1210–0110) and proceed to discontinue the use of the new control number.

The Agencies' burden estimation methodology excludes certain activities from the calculation of ''burden.'' If the activity is performed for any reason other than compliance with the applicable federal tax administration system or the Title I annual reporting requirements, it was not counted as part of the paperwork burden. For example, most businesses or financial entities maintain, in the ordinary course of business, detailed accounts of assets and liabilities, and income and expenses for the purposes of operating the business or entity. These recordkeeping activities were not included in the calculation of burden because prudent business or financial entities normally have that information available for reasons other than federal tax or Title I annual reporting. Only time for gathering and processing information associated with the tax return/annual reporting systems, and learning about the law, was included. In addition, an activity is counted as a burden only once if performed for both tax and Title I purposes. The Agencies also have designed the instruction package for the Form 5500 Annual Return/Report so that filers generally will be able to complete the Form 5500 Annual Return/Report by reading the instructions without needing to refer to the statutes or regulations. The Agencies, therefore, have included in their PRA calculations a burden for reading the instructions and find there is no recordkeeping burden attributable to the Form 5500 Annual Return/Report. The DOL solicits comments regarding whether or not any recordkeeping beyond that which is usual and customary is necessary to complete the Form 5500 Annual Return/Report. Comments are also solicited on whether the Form 5500 Annual Return/Report instructions are generally sufficient to enable filers to complete the Form 5500 Annual Return/Report without needing to refer to the statutes or regulations.

Summary Annual Report ICR: Section 2520.104b–10 sets forth the requirements for the Summary Annual Report (SAR) appendix and prescribes formats for such reports. The DOL is proposing to revise the currently approved information collection (1210–0040) to include required additions to the SAR formats that reflect the addition of the new Schedule MEP and Schedule DCG to the 5500 Annual Report/Return.

Form M–1 ICR: Effective for plan years beginning on or after January 1, 2022, DOL is proposing to amend the Form M–1 information collection (1210–0116) by adding new questions requiring MEWAs (plan and non-plan MEWAs) that offer or provide coverage for medical care to identify each participating employer in the MEWA by name and EIN. MEWAs that are not unfunded or insured must also provide participating employer's percentage of the total contributions (employer and employee) made by all employer participating in a MEP. This information is currently reported as a non-standard attachment as part of the Form 5500 filing. The reporting of this burden is being moved from OMB control number 1210–0110. For the 2021 plan year, pending the implementation of the Form M–1 changes, plan MEWAs that offer or provide coverage for medical care would be required provide participating employer information as a nonstandard attachment to the 2021 Form 5500 Annual Return/Report in a similar manner as currently required. A summary of paperwork burden estimates follows:

Agency: DOL–EBSA.

Type of Review: New information collection.

Title: Annual Information Return/Report of Employee Benefit Plan.

Affected Public: Individuals or households; Private Sector—Business or other for-profit; Not-for-profit institutions.

Forms: Form 5500 and Schedules.

Total Respondents: 804,000.

Total Responses: 804,000.

Frequency of Response: Annually.

Estimated Total Burden Hours: 588,000.

Total Annualized Costs: $275 million.

Agency: Department of Treasury—IRS.

Type of Revision: Revision of existing collection.

Title of Collection: Annual Return/Report of Employee Benefit Plan.

OMB Control Number: 1545–1610.
Affected Public: Individuals or households; Private Sector—Business or other for-profit; Not-for-profit institutions.
Forms: Form 5500 and Schedules.
Total Respondents: 804,000.
Total Responses: 804,000.
Frequency of Response: Annually.
Estimated Total Burden Hours: 354,000.
Total Annualized Costs: $142 million.
Agency: PBGC.
Type of Revision: Revision of existing collection.
Title of Collection: Annual Information Return/Report.
OMB Control Number: 1212–0057.
Affected Public: Individuals or households; Private Sector—Business or other for-profit; Not-for-profit institutions.
Forms: Form 5500 and Schedules.
Total Respondents: 24,744.
Total Responses: 24,744.
Frequency of Response: Annually.
Estimated Total Burden Hours: 1,242.
Total Annualized Costs: $2 million.
Agency: DOL–EBSA.
Type of Revision: Revision of existing collection.
Title of Collection: Annual Report for Multiple Employer Welfare Arrangements.
OMB Control Number: 1210–0116.
Affected Public: Not-for-profit institutions, Businesses or other for-profits.
Forms: Form M–1.
Total Respondents: 687.
Total Responses: 687.
Frequency of Response: Annually.
Estimated Total Burden Hours: 141.
Total Annualized Costs: $126,556.
Agency: DOL–EBSA.
Type of Revision: Revision of existing collection.
Title of Collection: Summary Annual Report Requirement.
OMB Control Number: 1210–0040.
Affected Public: Not-for-profit institutions, Businesses or other for-profits.
Total Respondents: 761,170.
Total Responses: 177,793,034.
Frequency of Response: Annually.
Estimated Total Burden Hours: 1,110,692.
Total Annualized Costs: $20,320,505.

The DOL solicits comments regarding whether or not any recordkeeping beyond that which is usual and customary is necessary to complete the Form 5500 Annual Return/Report. Comments are also solicited on whether the Form 5500 Annual Return/Report instructions are generally sufficient to enable filers to complete the Form 5500 Annual Return/Report without needing to refer to the statutes or regulations.

Paperwork and Respondent Burden: Estimated time needed to complete the forms listed below reflects the combined requirements of the IRS, the DOL, and the PBGC. The times will vary depending on individual circumstances. The estimated average times are:

	Pension plans		
	Large	Small, filing Form 5500	Small, filing 5500–SF
Form 5500	1 hr, 51 min	1 hr, 19 min.	
Sch A	2 hr, 52 min	2 hr, 52 min.	
Sch MB	8 hr, 49 min	8 hr, 6 min	8 hr, 6 min.
Sch SB	6 hr, 38 min	6 hr, 49 min	6 hr, 49 min.
Sch C	2 hr, 52 min.		
Sch D	1 hr, 39 min	20 min.	
Sch G	14 hr, 22 min.		
Sch H	11 hr, 51 min.		
Sch I	2 hr, 6 min	2 hr, 6 min.	
Sch R	1 hr, 45 min	1 hr, 7 min.	
Form 5500–SF			2 hr, 35 min.
Sch MEP	10 min.		

	Welfare plans that include health benefits	
	Large	Small, unfunded, combination unfunded/fully insured, or funded with a trust 5500–SF
Form 5500	1 hr, 45 min	1 hr, 14 min.
Sch A	3 hr, 40 min	2 hr, 43 min.
Sch C	3 hr, 38 min.	
Sch D	1 hr, 52 min	20 min.
Sch G	11 hr, 0 min.	
Sch H	12 hr, 46 min.	
Sch I		1 hr, 56 min.
Form 5500–SF		2 hr, 35 min.

	Welfare plans that do not include health benefits		
	Large	Small, filing Form 5500	Small, filing Form 5500–SF
Form 5500	1 hr, 45 min	1 hr, 14 min.	
Sch A	3 hr, 40 min	2 hr, 43 min.	
Sch C	3 hr, 38 min.		
Sch D	1 hr, 52 min	20 min.	
Sch G	11 hr, 0 min.		
Sch H	12 hr, 46 min.		
Sch I		1 hr, 56 min.	
Form 5500–SF			2 hr, 35 min.
Sch M1	15 min.		

	Direct filing entities					
	Master trusts	CCTs	PSAs	103–12 IEs	GIAs	DCGs
Form 5500	1 hr, 50 min	1 hr, 30 min	1 hr, 23 min	1 hr, 38 min	1 hr, 26 min	1 hr, 50 min.
Sch A	2 hr, 54 min	2 hr, 48 min	2 hr, 46 min	2 hr, 51 min	3 hr, 1 min	2 hr, 52 min.
Sch C	3 hr, 2 min	1 hr, 2 min	29 min	1 hr, 56 min	1 hr, 22 min	2 hr, 42 min.
Sch D	1 hr, 30 min	48 min	34 min	1 hr, 1 min	54 min	1 hr, 39 min.
Sch G	12 hr, 34 min			8 hr, 3 min		11 hr, 6 min.
Sch H	12 hr, 19 min	11 hr, 47 min	11 hr, 43 min	12 hr, 16 min	12 hr, 1 min	8 hr, 36 min.
Sch DCG						1 hr, 33 min.

The aggregate hour burden for the Form 5500 Annual Return/Report (including schedules and short form) is estimated to be 0.9 million hours annually. The hour burden reflects filing activities carried out directly by filers. The cost burden is estimated to be $419 million annually. The cost burden reflects filing services purchased by filers. Presented below is a chart showing the total hour and cost burden of the revised Form 5500 Annual Return/Report separately allocated across the DOL and the IRS. There is no separate PBGC entry on the chart because, as explained below, its share of the paperwork burden is very small relative to that of the IRS and the DOL.

	DOL		IRS	
	Hours	Costs	Hours	Costs
Pension:				
Large Plans	261,464	$62,431,639.11	142,897	$31,568,313.36
Small Plans	174,999	87,694,622.39	176,481	103,113,327.32
Welfare:				
Large Plans	108,142	111,593,190.83	9,953	1,811,627.38
Small Plans	6,137	5,407,649.86	2,507	1,252,295.71
Total:				
Large Plans	369,607	174,024,829.94	152,850	33,379,940.74
Small Plans	181,136	93,102,272.24	178,988	104,365,623.03
DFEs	37,642	8,014,192.20	21,908	4,543,173.65
Total Plans	588,385	275,141,294.38	353,746	142,288,737.43

The paperwork burden allocated to the PBGC includes a portion of the general instructions, basic plan identification information, a portion of Schedule MB, a portion of Schedule SB, a portion of Schedule H, and a portion of Schedule R. The PBGC's Estimated Share of Total Form 5500 Annual Return/Report Burden is: 1,242 Hours and $1.6 million per year.

BILLING CODE 4510–29–P

APPENDIX A – PROPOSED SCHEDULE MEP (MULTIPLE-EMPLOYER RETIREMENT PLAN INFORMATION) AND INSTRUCTIONS

SCHEDULE MEP (Form 5500) Department of the Treasury Internal Revenue Service Department of Labor Employee Benefits Security Administration	**MULTIPLE-EMPLOYER RETIREMENT PLAN INFORMATION** **This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974 (ERISA) and Section 6058(a) of the Internal Revenue Code (the Code)** **File as an attachment to Form 5500.** ▶	OMB Nos. 1210-XXXX 1210-XXXX **2022** **This Form is Open to Public Inspection**

For calendar plan year 202X or fiscal plan year beginning _____ and ending _____

A Name of plan	**B** Three-digit plan number (PN) ▶
C Plan administrator's name as shown on line 2a of Form 5500	EIN

Part I Type of Multiple-Employer Pension Plan. All multiple-employer pension plans must complete.

Line 1 Check the appropriate box to indicate type of multiple-employer pension plan. (See Instructions)

a [] association retirement plan (See 29 CFR 2510.3-55) (Complete Part II)
b [] professional employer organization (PEO) plan (See 29 CFR 29 CFR 2510.3-55) (Complete Part II)
c [] pooled employer plan (PEP) (See 29 CFR 2510.3-44) (Complete Parts II and III)
d [] other multiple-employer pension plan (Describe)_____ (Complete Part II)

Part II Participating Employer Information.

All multiple-employer pension plans that are subject to section 210(a) of ERISA (see instructions for filing the Form 5500) must complete Part II, in addition to Part I, in accordance with the instructions, to report the information for each employer participating in the MEP.

Line 2 Participating Employer Information. Complete as many entries as needed to list the required information for each participating employer that is not an individual person (See instructions).

2a. Name of Participating Employer	**2b.** EIN	**2c.** Percentage of Total Contributions for the Plan Year	**2d.** Aggregate Account Balances Attributable to Participating Employer
2a. Name of Participating Employer	**2b.** EIN	**2c.** Percentage of Total Contributions for the Plan Year	**2d.** Aggregate Account Balances Attributable to Participating Employer

CAUTION Do not individually list information for working owners (see instructions and 29 CFR 2510.3-55(d)(2)) or other individuals who are participants or beneficiaries in the plan or arrangement that are no longer associated with a particular participating employer or participating employer plan. (See instructions). Providing identifying information for individuals may result in rejection of this filing. If there are any such individuals in the plan, answer "Yes" to line 2e and provide the total information for all such individuals, without providing names or other identifying information.

2e. Does the plan include any individuals not participating through an employer or who are individual working owners?
[] Yes [] No

2f. If you answer "Yes" in line 2e, enter a good faith estimate of percentage of total contributions made by all such individuals that are not listed on line 2a during the plan year.

2g. If you answer "Yes" in Line 2e, enter the aggregate account balances for all such individuals that are not listed on line 2a.

Part III Pooled Employer Plan Information.

Pooled employer plans must answer all of the questions in Part III, in addition to completing all of Parts I and II.

Line 3. Has the pooled plan provider (identified as the plan sponsor and administrator in Part II of the Form 5500) acknowledged in writing that it is the named fiduciary and plan administrator? [] Yes [] No

Line 4. Has the pooled plan provider (identified as the plan sponsor and administrator in Part II of the Form 5500) acknowledged in writing its administrative responsibilities for the plan? [] Yes [] No

Line 5. Is the pooled plan provider currently in compliance with the Form PR (Pooled Plan Provider Registration Statement) requirements? (See instructions and 29 CFR 2510.3-44)[] Yes [] No

5a If "Yes" is checked, enter the ACK ID for the most recent Form PR that was required to be filed under the Form PR filing requirements. (Failure to enter a valid ACK ID will subject the Form 5500 filing for any PEP operated by the pooled plan provider to be rejected as incomplete.)

ACK ID _____

Line 6. Have services been provided to the plan through affiliates or other related parties to the pooled plan provider? [] Yes [] No

6a If "Yes," are you relying on a prohibited transaction exemption? If you answer yes, enter the PTE(s) on which you are relying. [] Yes (enter PTE _____) [] No

PROPOSED INSTRUCTIONS FOR SCHEDULE MEP

2022 Instructions for Schedule MEP (Form 5500) (Multiple-Employer Retirement Plan Information)

General Instructions

The Schedule MEP provides information about multiple-employer pension plans (MEPs). It consists of three parts. All MEPs must complete Parts I and II to indicate the specific type of plan or arrangement, to complete a list of participating employers, and to provide certain required information.

Part III only needs to be completed by pooled employer plans to answer questions specific to pooled employer plans and the pooled plan provider that sponsors and administers the pooled employer plan.

Who Must File

Schedule MEP (Form 5500) must be attached to a Form 5500 filed for a pension plan that checks the "multiple employer plan" box on Part I of Form 5500, to provide information specific to such plan, including a list of participating employers and related information.

Remember to check the Schedule MEP box on the Form 5500 (Part II, line 10a(5)) to indicate that Schedule MEP is attached to the Form 5500.

Welfare plans are not required to file the Schedule MEP.

Specific Instructions

Part I Type of Multiple-Employer Pension Plan

Line 1. For purposes of completing the Schedule MEP, check the element that best describes the type of plan.

Element (a) Association Retirement (Defined Contribution) Plan. Check this box if the Schedule MEP is being filed for a defined contribution MEP that is an Association Retirement Plan and complete Part II. A defined contribution pension plan sponsored by a bona fide group or association of employers is a MEP that is an Association Retirement Plan if: (1) the group or association has at least one substantial business purpose unrelated to offering and providing employee benefits to its employer members and their employees; (2) each employer member directly acts as an employer of at least one employee participating in the MEP; (3) group or association has a formal organizational structure, (4) the group or association is controlled by its employer members; (5) employer members of the group or association have a commonality of interest; (6) plan participation is limited to employees and former employees of its employer members, and their beneficiaries; (7) the group or association must not be a bank or trust company, insurance issuer, broker-dealer, or other similar financial services firm (including a pension record keeper or third-party administrator) or owned or controlled by such an entity or any subsidiary or affiliate of such an entity, other than to the extent such an entity, subsidiary or affiliate participates in the group or association in its capacity as an employer member; and (8) the group or association meets any other applicable conditions under 29 CFR 2510.3-55(b).

CAUTION. Do not check this box for a defined benefit plan sponsored by a bona fide group or association of employers. See instructions for element (d) Other Multiple Employer Pension Plan.

Element (b) Professional Employer Organization (Defined Contribution) Plan (PEO Plan). Check this box if the Schedule MEP is being filed for a defined contribution MEP that is a Professional Employer Organization Plan (PEO Plan) and complete Part II. For this purpose, a professional employer organization (PEO) is a human-resource company that contractually assumes certain employer responsibilities of its client employers. A defined contribution pension plan sponsored by a PEO is a MEP that is a PEO Plan if the PEO (1) performs substantial employment functions on behalf of its client employers, and maintains adequate records relating to such functions; (2) have substantial control over the functions and activities of the MEP as the plan sponsor, the plan administrator, and a named fiduciary and continues to have plan obligations to MEP participants after the client employer no longer contracts with the organization; (3) ensures that each client employer that adopts the MEP acts directly as an employer of at least one employee who is a participant covered under the MEP; (4) ensures that participation in the MEP is available only to employees and former employees of the PEO and client employers, employees and former employees of former client employers who became participants during the contract period between the PEO and former client employers, and their beneficiaries; and (5) meets any other applicable conditions under 29 CFR 29 CFR 2510.3-55(c).

CAUTION. Do not check this box for a defined benefit plan sponsored by a PEO. See instructions for element (d) Other Multiple Employer Pension Plan.

Element (c) Pooled Employer Plan (PEP). Check this box if the Schedule MEP is being filed for a MEP that is a PEP plan and complete Parts II and III. A pooled employer plan operated by a "pooled plan provider" is a MEP if: (1) the plan is an individual account plan established or maintained for the purpose of providing benefits to the employees of two or more employers; (2) the plan is a qualified retirement plan or a plan funded entirely with individual retirement accounts

(IRA-based plan); and (3) the terms of the plan meets certain requirements set forth in ERISA section 3(43).

A "pooled plan provider" with respect to a pooled employer plan is defined in ERISA section 3(44) and Code section 413(e) to mean a person that:

1. is designated by the terms of the plan as a named fiduciary under ERISA, as the plan administrator, and as the person responsible to perform all administrative duties that are reasonably necessary to ensure that the plan meets the Code requirements for tax-favored treatment and the requirements of ERISA and to ensure that each employer in the plan takes actions as the Secretary of Labor or the pooled plan provider determines necessary for the plan to meet Code and ERISA requirements, including providing to the pooled plan provider any disclosures or other information that the Secretary may require or that the pooled plan provider otherwise determines are necessary to administer the plan or to allow the plan to meet Code and ERISA requirements;

2. acknowledges in writing its status as a named fiduciary under ERISA and as the plan administrator;

3. is responsible for ensuring that all persons who handle plan assets or are plan fiduciaries are bonded in accordance with ERISA requirements; and

4. registers as a pooled plan provider by filing a Form PR in accordance with 29 CFR 2510.3-44.

Note. The term "pooled employer plan" does not include a multiemployer plan or plan maintained by employers that have a commonality of interest other than having adopted the plan. The term also does not include a plan established before January 1, 2021, which is the effective date of the SECURE Act provisions allowing pooled employer plans to begin operating, unless the plan

administrator elects to have the plan treated as a pooled employer plan and the plan meets the Code and ERISA requirements applicable to a pooled employer plan established on or after such date, including the requirement that the pooled plan provider file a Form PR with the Department of Labor before beginning to operate any pooled employer plan(s).

CAUTION. The pooled plan provider must be the same as the person identified as the plan sponsor and administrator in Part II of the Form 5500. All information for the pooled employer plan and the pooled plan provider operating the plan reported on the Form 5500, including Schedule MEP, must match the information reported on the Form PR. Failure to use consistent identifying information could result in correspondence from the Department of Labor or the Internal Revenue Service.

Element (d) Other Multiple-Employer Pension Plan. Check this box, describe the type of MEP (e.g., defined benefit multiple-employer pension plan or collectively bargained multiple-employer pension plan that did not elect to be treated as a multiemployer plan) and complete Part II of the Schedule MEP if the Schedule MEP is being filed for a plan that is maintained by more than one employer and is not one of the plans already described.

Note. A multiple employer pension plan can be collectively bargained and collectively funded, but if covered by PBGC termination insurance, must have properly elected before September 27, 1981, not to be treated as a multiemployer plan under Code section 414(f)(5) or ERISA sections 3(37)(E) and 4001(a)(3) and have not revoked that election or made an election to be treated as a multiemployer plan under Code section 414(f)(6) or ERISA section 3(37)(G).

Part II Multiple-Employer Plan Participating Employer Information.

All MEPs (including association retirement plans, PEO plans, pooled employer plans (PEPs), and other multiple-employer pension plans) must complete Part II to report the information for each participating employer in the MEP filing the Form 5500.

Complete as many entries as needed to list the required information for each participating employer that is not an individual person.

Note. The amounts listed in line 2c and line 2f must equal 100 percent (with a permitted variance of less than 1 percent due to rounding).

Line 2a. Enter the name of each participating employer in line 2a.

Note. If there are any working owners without employees participating in the plan, answer "Yes" to line 2e and provide the total contribution and account balance information for all such individuals on lines 2f and 2g, without providing names or other identifying information. For purposes of completing this schedule, a "working owner" has the same meaning as in 29 CFR 2510.3-55(d)(2).

Line 2b. Enter the EIN of the participating employer.

CAUTION. Do not enter SSNs in lieu of an EIN. The Schedule MEP is open to public inspection, and the contents are public information and are subject to publication on the Internet. Because of privacy concerns, the inclusion of a SSN or any portion thereof on this Schedule MEP may result in the rejection of the filing.

Line 2c. Enter a good faith estimate of the participating employer's percentage of the total contributions made by all participating employer (including the total contribution amount for

individuals reported on line 2f) during the plan year. If a participating employer made no contributions for the plan year (including participant contributions), enter "-0-" on line 2c.

Line 2d. Enter the aggregate account balances for the participating employer, determined as the sum of the account balances of the employees of such employer (and the beneficiaries of such employees).

Line 2e. If the plan includes any individuals not participating through an employer or who are individual working owners, answer "Yes" to line 2e and complete lines 2f and 2g. Do not identify such individuals on line 2a.

Line 2f. If the answer to line 2e is "Yes," enter a good faith estimate of the percentage of total contributions made by such individuals that are not listed on line 2a.

Line 2g. If the answer to line 2e is "Yes," enter the aggregate account balances for all individuals that are not listed on line 2a.

Part III. Pooled Employer Plan Information.

If this filing is for a pooled employer plan (PEP), you must answer lines 3, 4, 5, and 6.

Line 3. You must indicate whether the pooled plan provider (identified as the plan sponsor and administrator in Part II of the Form 5500) acknowledged in writing to all the participating employers that it is the named fiduciary and plan administrator.

Note: You must also identify the pooled plan provider as the named fiduciary on Schedule C and report all required service provider information.

Line 4. You must indicate whether the pooled plan provider (identified as the plan sponsor and administrator in Part II of the Form 5500) has acknowledged in writing its administrative

responsibilities for the plan. These administrative duties include conducting proper testing with respect to the plan and the employees of each employer in the plan that are necessary to comply with all applicable qualification and other tax requirements, and ensuring that all plan fiduciaries and persons who handle plan funds are bonded in accordance with section 412 of ERISA.

Line 5. To be able to operate one or more pooled employer plans, pooled plan providers must satisfy a number of conditions, including compliance with the Form PR (Pooled Plan Provider Registration) requirements. See 29 CFR 2510.3-44.

Pooled employer plans must answer whether the pooled plan provider that is the plan sponsor and administrator for the pooled employer plan has complied with the Form PR registration requirements. If you check "Yes" in line 5 to indicate that the pooled plan provider has complied with the registration requirements, enter in line 5a the Receipt Confirmation Code (ACK ID) for the most recent Form PR that was required to be filed under the Form PR filing requirements.

Failure to enter a valid Receipt Confirmation Code (ACK ID) for the pooled plan provider's most recent Form PR will subject the Form 5500 filing to rejection as incomplete.

Line 6. If services have been provided to the plan through affiliates or other related parties to the pooled plan administrator, you must answer "Yes" to line 6 and complete line 6a. If you are relying on a prohibited transaction exemption (PTE), enter the PTE number. If you answer "No," you must complete Schedule G to report nonexempt transactions.

For these purposes, the term affiliate includes all persons who are treated as a single employer with the person intending to be a pooled plan provider under section 414(b), (c), (m), or (o) of the Internal Revenue Code and are expected to provide services to pooled employer plans sponsored by the pooled plan provider, and any officer, director, partner, employee, or relative (as

defined in section 3(15) of the Act) of such person; and any corporation or partnership of which such person is an officer, director, or partner.

APPENDIX B-PROPOSED SCHEDULE DCG (INDIVIDUAL PLAN INFORMATION) AND INSTRUCTIONS

Schedule DCG	Individual Plan Information	OMB Nos. 1210XXXX 1210-XXXX
Department of Labor Department of the Treasury Internal Revenue Service	This schedule is required to be filed under Section 103 of the Employee Retirement Income Security Act (ERISA) and Section 6058(a) of the Internal Revenue Code (Code) ► File as an attachment to Form 5500	2022 This Form is Open to Public Inspection.

Part I DCG Information

A Name of DCG	B Three-digit plan number for DCG (PN) ►
	C EIN for DCG

Part II Individual Plan Identification Information Complete a separate Schedule DCG for each individual plan whose reporting obligations are intended to be satisfied by the DCG's Form 5500 filing

This Schedule is for ☐ a single-employer plan ☐ a collectively-bargained plan

Part III Basic Individual Plan Information

1a Name of plan	**1b** Three-digit plan number (PN) ► **1c** Effective date of plan
2a Plan sponsor's name (employer, if for a single-employer plan) Mailing address (include room, apt., suite no. and street, or P.O. Box) City or town, state or province, country, and ZIP or foreign postal code (if foreign, see instructions)	**2b** Employer Identification Number (EIN) **2c** Plan sponsor's telephone number **2d** Business code
3 If the name and/or EIN of the plan sponsor or the plan name has changed since the last return/report filed for this plan, enter the plan sponsor's name, EIN, the plan name and the plan number from the last return/report: **3a** Sponsor's name **3c** Plan Name	**3b** EIN **3d** PN

4a Total number of participants at the beginning of the plan year	**4a**	
b Total number of participants as of the end of the plan year	**4b**	
c(1) Total number of active participants at the beginning of the plan year	**4c(1)**	
c(2) Total number of active participants at the end of the plan year	**4c(2)**	
d Number of participants with account balances as of the beginning of the plan year	**4d**	
e Number of participants with account balances as of the end of the plan year	**4e**	
f Number of participants who terminated employment during the plan year with accrued benefits that were less than 100% vested	**4f**	

Part IV Financial Information

		(a) Beginning of Year	(b) End of Year
5a Total plan assets	**5a**		
(1) Participant loans	**5a(1)**		
b Total plan liabilities	**5b**		

c Net assets (subtract line 5b from line 5a)	**5c**		

		Amount
6a Contributions received or receivable in cash from		
(1) Employers.	**6a(1)**	
(2) Participants	**6a(2)**	
(3) Others (including rollovers)	**6a(3)**	
b. Noncash contributions	**6b**	
c. Total contributions (add lines 6a(1)-(3) and line 6(b))	**6c**	
6d Benefit payment and payments to provide benefits:	**6d(1)**	
e Corrective distributions (see instructions)	**6e**	
f Certain deemed distributions of participant loans (see instructions)	**6f**	
g Administrative service provider's expense (salaries, fees, commissions)	**6g**	
h Other expenses	**6h**	
i Net income (loss).	**6i**	
j Transfers of assets	**6j(1)**	
(1) To this plan		
(2) From this plan	**6j(2)**	

Part V Plan Characteristics

7 Enter the applicable two-character feature codes from the List of Plan Characteristics Codes in the instructions.

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Part VI Compliance Questions

		Yes	No	Amount
8a Was there a failure to transmit to the plan any participant contributions within the time period described in 29 CFR 2510.3-102? Continue to answer "Yes" for any prior year failures until fully corrected. (See instructions and DOL's Voluntary Fiduciary Correction Program.)	**8a**			
b Were there any nonexempt transactions with any party-in-interest?	**8b**			
c Has the plan failed to provide any benefit when due under the plan?	**8c**			

9a If, during this plan year, any assets or liabilities were transferred from this plan to another plan(s), identify the plan(s) to which assets or liabilities were transferred. (See instructions.)

9b(1) Name of plan(s)	**9b(2)** EIN(s)	**9b(3)** PN(s)

10 Is this a defined contribution plan subject to the minimum funding requirements of section 412 of the Code? ☐ Yes ☐ No

11a Does the plan satisfy the coverage and nondiscrimination tests of Code sections 410(b) and 401(a)(4) by combining this plan with any other plans under the permissive aggregation rules? [] Yes [] No

11b If this is a Code section 401(k) plan, check the correct box to indicate how the plan is intended to satisfy the nondiscrimination requirements for employee deferrals and employer matching contributions (as applicable) under Code sections 401(k)(3) and 401(m)(2)?

☐ Design-based safe harbor method ☐ "Prior year" ADP test ☐ "Current year" ADP test ☐ N/A

12 If the plan sponsor is an adopter of a pre-approved plan that received a favorable IRS Opinion Letter, enter the date of the Opinion Letter __/__/____(MMDDYYYYY) and the Opinion Letter serial number_____.

Part VII Accountant Opinion Information for Large Participating Plans

13 Complete lines 13a through 13c if the report of an independent qualified public accountant is attached to this Schedule DCG.

a The opinion reflected in the attached report of an independent qualified public accountant for this plan is (see instructions):

(1) ☐ Unmodified **(2)** ☐ Qualified **(3)** ☐ Disclaimer **(4)** ☐ Adverse

b Check the appropriate box(es) to indicate whether the IQPA performed an ERISA section 103(a)(3)(C) audit. Check boxes (1) and (2) if the audit was performed pursuant to both 29 CFR 2520.103-8 and 29 CFR 2520.103-12(d). Check box (3) if pursuant to neither.

(1) ☐ DOL Regulation 2520.103-8 **(2)** ☐ DOL Regulation 2520.103-12(d) **(3)** ☐ neither DOL Regulation 2520.103-8 nor DOL Regulation 2520.103-12(d).

c Enter the name and EIN of the accountant (or accounting firm) below:

(1) Name: **(2)** EIN:

PROPOSED INSTRUCTIONS FOR SCHEDULE DCG

2022 Instructions for Schedule DCG (Form 5500) Individual Plan Information

General Instructions

Purpose of Schedule

This schedule is used for a plan administrator to report information regarding each individual plan participating in a Defined Contribution Group (DCG) Reporting Arrangement, as permitted by SECURE Act section 202.

Who Must File

Schedule DCG must be attached to a Form 5500 filed for a DCG reporting arrangement. Each plan participating in the DCG reporting arrangement must individually complete a Schedule DCG as an attachment to the Form 5500.

Remember to check Schedule DCG box on the Form 5500 (Part II, Line 10(a)(4) to indicate Schedule DCG is attached to the Form 5500.

Specific Instructions

Part I – DCG Information

Lines A, B, and C. The information must be the same as reported in Part II of the Form 5500 to which this schedule is attached.

Do not use a SSN in line C in lieu of an EIN. The Schedule DCG and its attachments are open to public inspection, and the contents are public information. Because of privacy concerns, the inclusion of a SSN or any portion thereof on this Schedule DCG or any of its attachments may result in the rejection of the filing.

You can apply for an EIN from the IRS online, by fax, or by mail depending on how soon you need to use the EIN. For more information, see Section 3: Electronic Filing Requirement under General Instructions to Form 5500.

Part II – Individual Plan Identification Information

A separate Schedule DCG must be filed for each individual plan participating in the DC Group Reporting Arrangement.

Box for Single-Employer Plan. Check this box if the Schedule DCG is filed for a single-employer plan. A single-employer plan for this reporting purpose is an employee benefit plan maintained by one employer or one employee organization (determined on a controlled group basis) in which the funds attributable to each employer are available to pay benefits only for that employer's employees.

Box for Collectively-Bargained, Single-Employer Plan. Check this box if the contributions to the plan and/or the benefits paid by the plan are subject to the collective bargaining process. The contributions and/or benefits do not have to be identical for all employees under the plan.

Part III - Basic Individual Plan Information

Complete separately for each individual plan that participates in the DCG Reporting Arrangement.

Line 1a. Enter the formal name of the plan or enough information to identify the plan. Abbreviate if necessary. If an annual return/report or a schedule has previously been filed on behalf of the plan, regardless of the type of form or schedule that was filed, use the same name or abbreviation as was used on the prior filings. Once you use an abbreviation, continue to use it for that plan on all future annual return/report or schedule filings with the IRS, DOL, and PBGC. Do not use the same name

or abbreviation for any other plan, even if the first plan is terminated. If the plan has changed its name from the prior year filing(s), complete line 3 to indicate that the plan was previously identified by a different name.

Line 1b. Enter the three-digit plan or entity number (PN) of the employer or plan administrator assigned to the plan. This three-digit number, in conjunction with the EIN entered on line 2b, is used by the IRS, DOL, and PBGC as a unique 12-digit number to identify the plan.

Line 1c. Enter the date the plan first became effective.

Line 2a. Enter the name of the plan sponsor. If the plan covers only the employees of one employer, enter the employer's name. Enter the current street address, the name of the city, the two-character abbreviation of the U.S. state or possession and zip code.

A post office box number may be entered if the Post Office does not deliver mail to the sponsor's street address.

Note. Use the IRS Form 8822-B, *Change of Address or Responsible Party — Business*, to notify the IRS if the address provided here is a change in your business mailing address or your business location.

Line 2b. Enter the nine-digit EIN assigned to the plan sponsor/employer. Do not use a SSN in lieu of an EIN. Because of privacy concerns, the inclusion of a SSN or any portion thereof on this line may result in the rejection of the filing.

Employers without an EIN must apply for one as soon as possible. To apply for an EIN from the IRS:

- Mail or fax Form SS-4, Application for EIN, obtained at www.irs.gov/orderforms.

- See *https://www.IRS.gov/Businesses* and click on "Employer ID Numbers" for additional information. The EIN is issued immediately once the application information is validated. (The online application process is not yet available for corporations with addresses in foreign countries or Puerto Rico.)

Line 2c. Enter the plan sponsor's telephone number, including the area code.

Line 2d. Enter the six-digit business code from the list of business codes (on pages xx) that best describes the primary nature of the plan sponsor's business. Do not enter code 525100 (Insurance & Employee Benefit Funds) or 813930 (Labor Unions and Similar Labor Organizations) unless the predominant industry in which the active participants are employed is the industry of insurance and employee benefit funds, or the industry of labor unions and similar labor organizations.

Line 3. If the plan sponsor's name and/or EIN have changed or the plan name has changed since the last return/report or schedule was filed for this plan, enter the plan sponsor's name, EIN, the plan name, and the plan number as it appeared on the last return/report or schedule filed.

The failure to indicate on line 3 that a plan sponsor was previously identified by a different name or a different EIN or that the plan name has been changed could result in correspondence from the DOL and/or the IRS.

Line 4a. Enter the total number of participants at the beginning of the plan year.

Line 4b. Enter the total number of participants at the end of the plan year.

Line 4c(1). Enter the total number of active participants at the beginning of the plan year.

Line 4c(2). Enter the total number of active participants at the end of the plan year.

"Participant" for purpose of lines 4a(1)–4c(2) means any individual who is included in one of the categories below.

1. Active participants (for example, any individuals who are currently in employment covered by the plan and who are earning or retaining credited service under the plan) including:

- Any individuals who are eligible to elect to have the employer make payments under a section 401(k) qualified cash or deferred arrangement, and
- Any nonvested individuals who are earning or retaining credited service under the plan.

This category does not include (a) nonvested former employees who have incurred the break in service period specified in the plan or (b) former employees who have received a "cash-out" distribution or deemed distribution of their entire nonforfeitable accrued benefit.

2. Retired or separated participants receiving benefits (for example, individuals who are retired or separated from employment covered by the plan and who are receiving benefits under the plan). This category does not include any individual to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

3. Other retired or separated participants entitled to future benefits (for example, any individuals who are retired or separated from employment covered by the plan and who are entitled to begin receiving benefits under the plan in the future). This category does not include any individual to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

4. Deceased individuals who had one or more beneficiaries who are receiving or are entitled to receive benefits under the plan. This category does not include any individual to whom an insurance company has made an irrevocable commitment to pay all the benefits to which the beneficiaries of that individual are entitled under the plan.

Line 4d. Enter the number of participants included on line 4a (total number of participants at the beginning of the plan year) who have account balances. For example, for a section 401(k) plan the number entered on line 4d should be the number of participants counted on line 4a who have made a contribution, or for whom a contribution has been made, to the plan for this plan year or any prior plan year.

Line 4e. Enter the number of participants included on line 4b (total number of participants at the end of the plan year) who have account balances. For example, for a section 401(k) plan the number entered on line 4e should be the number of participants counted on line 4b who have made a contribution, or for whom a contribution has been made, to the plan for this plan year or any prior plan year.

Line 4f. Include any individual who terminated employment during this plan year, whether or not he or she (a) incurred a break in service, (b) received an irrevocable commitment from an insurance company to pay all the benefits to which he or she is entitled under the plan, and/or (c) received a cash distribution or deemed cash distribution of his or her nonforfeitable accrued benefit.

Part IV – Financial Information

Note. The cash, modified cash, or accrual basis accounting methods may be used for recognition of transactions in Part IV, as long as you use one method consistently. If Form 5500 or Form 5500-SF was filed for the previous year, amounts reported on lines 5a, 5b, and 5c for the beginning of the plan year must be the same as reported for the end of the plan year for the corresponding lines on the return/report for the preceding plan year. However, if Schedule DCG was filed in the previous year, the amount reported on lines 5a, 5b, and 5c for the beginning of the plan year must be the

same as reported for the end of the plan year on the Schedule DCG filed for the previous year. Use whole dollars only.

Current value means fair market value where available. Otherwise, it means the fair value as determined in good faith under the terms of the plan by a trustee or a named fiduciary, assuming an orderly liquidation at time of the determination. *See* ERISA section 3(26).

Line 5a. Enter the total amount of plan assets at the beginning of the plan year in column (a). Do not include contributions designated for the 2022 plan year in column (a). Enter the total amount of plan assets at the end of the plan year in column (b).

Line 5a(1). Enter the current value of all loans to participants including residential mortgage loans that are subject to Code section 72(p). Include the sum of the value of the unpaid principal balances, plus accrued but unpaid interest, if any, for participant loans made under an individual account plan with investment experience segregated for each account, which are made in accordance with 29 CFR 2550.408b-1 and secured solely by a portion of the participant's vested accrued benefit. When applicable, combine this amount with the current value of any other participant loans. Do not include in column (b) a participant loan that has been deemed distributed during the plan year under the provisions of Code section 72(p) and Treasury Regulations section 1.72(p)-1, if both of the following circumstances apply:

1. Under the plan, the participant loan is treated as a directed investment solely of the participant's individual account; and

2. As of the end of the plan year, the participant is not continuing repayment under the loan.

If both of these circumstances apply, report the loan as a deemed distribution on line 6f. However, if either of these circumstances does not apply, the current value of the participant loan

(including interest accruing thereon after the deemed distribution) must be included in column (b) without regard to the occurrence of a deemed distribution.

Note. After a participant loan that has been deemed distributed is included in the amount reported on line 6f, it is no longer to be reported as an asset on line 5a unless, in a later year, the participant resumes repayment under the loan. However, such a loan (including interest accruing thereon after the deemed distribution) that has not been repaid is still considered outstanding for purposes of applying Code section 72(p)(2)(A) to determine the maximum amount of subsequent loans. Also, the deemed distribution is not treated as an actual distribution for other purposes, such as the qualification requirements of Code section 401, including, for example, the determination of top-heavy status under Code section 416 and the vesting requirements of Treasury Regulations section 1.411(a)-7(d)(5). See Q&As 12 and 19 of Treasury Regulations section 1.72(p)-1.

The entry on line 5a, column (b) (plan assets at end of year) must include the current value of any participant loan included as a deemed distribution in the amount reported for any earlier year if, during the plan year, the participant resumes repayment under the loan. In addition, the amount to be entered on line 6f must be reduced by the amount of the participant loan reported as a deemed distribution for the earlier year.

Line 5b. Enter the total liabilities at the beginning and end of the plan year. Liabilities to be entered here do not include the value of future pension payments to participants. The amount to be entered in line 5b for accrual basis filers includes, among other things:

1. Benefit claims that have been processed and approved for payment by the plan but have not been paid (including all incurred but not reported (IBNR) welfare benefit claims);

2. Accounts payable obligations owed by the plan that were incurred in the normal operations of the plan but have not been paid; and

3. Other liabilities such as acquisition indebtedness and any other amount owed by the plan.

Line 5c. Enter the net assets as of the beginning and end of the plan year. (Subtract line 5b from 5a). Line 5c, column (b), must equal the sum of line 5c, column (a), plus lines 6g (net income (loss)) and 6h (transfers to (from) the plan).

Lines 6a(1) and (2). Enter the total cash contributions received and/or receivable by the plan from employers and participants during the plan year. Plans using the accrual basis of accounting must not include contributions designated for years before the 2022 plan year on line 6a(1).

Line 6a(3). Enter the amount of all other contributions including transfers or rollovers received from other plans valued on the date of contribution.

Line 6b. Enter the current value, at date contributed, of securities or other noncash property.

Line 6c. Enter the total cash, noncash, and other contributions received and/or receivable by the plan from employers and participants during the plan year.

Line 6d. Enter the total amount of benefits paid directly to participants or beneficiaries, including payments made (and for accrual basis filers payments due) to or on behalf of participants or beneficiaries in cash, securities, or other property (including rollovers of an individual's accrued benefit or account balance); all eligible rollover distributions as defined in Code section 401(a)(31)(D) paid at the participant's election to an eligible retirement plan (including an IRA within the meaning of Code section 401(a)(31)(E)).

Line 6e. Enter total amount of corrective distributions, including all distributions paid during the plan year of excess deferrals under section 402(g)(2)(A)(ii), excess contributions under section 401(k)(8), excess aggregate contributions under Code section 401(m)(6), and allocable income distributed. Also include on this line any elective deferrals and employee

contributions distributed or returned to employees during the plan year as well as any attributable income that was also distributed.

Line 6f. Enter the total amount of certain deemed distributions of participant loans, including a participant loan that has been deemed distributed during the plan year under the provisions of Code section 72(p) and Treasury Regulations section 1.72(p)-1 only if both of the following circumstances apply:

1. Under the plan, the participant loan is treated as a directed investment solely of the participant's individual account; and

2. As of the end of the plan year, the participant is not continuing repayment under the loan.

If either of these circumstances does not apply, a deemed distribution of a participant loan should not be reported on line 6d. Instead, the current value of the participant loan (including interest accruing thereon after the deemed distribution) must be included on line 5a(1)), column (b) (participant loans – end of year), without regard to the occurrence of a deemed distribution.

Line 6g. The amount to be reported for expenses involving administrative service providers (salaries, fees, and commissions) during the plan year includes the total fees paid (or in the case of accrual basis plans, costs incurred during the plan year but not paid as of the end of the plan year) by the plan for, among others:

1. Salaries to employees of the plan;

2. Fees and expenses for accounting, actuarial, legal, investment management, investment advice, and securities brokerage services;

3. Contract administrator fees; and

4. Fees and expenses for individual plan trustees, including reimbursement for travel, seminars, and meeting expenses.

Line 6h. Other expenses (paid and/or payable) include other administrative and miscellaneous expenses paid by or charged to the plan during the plan year, including among others office supplies and equipment, telephone, and postage.

Part V - Plan Characteristics

Line 7. Enter all applicable plan characteristics codes that applied during the reporting year from the List of Plan Characteristics Codes shown in the instructions for Form 5500.

Part VI - Compliance Questions

Line 8a. Plans that check "Yes," must enter the aggregate amount of all late contributions for the year. The total amount of the delinquent contributions must be included on line 8a for the year in which the contributions were delinquent and must be carried over and reported again on line 8a for each subsequent year (or on line 4a of Schedule H or I of the Form 5500 if not eligible to file the Form 5500-SF or not eligible or choosing not to rely on a DCG Form 5500 filing to satisfy the plan's reporting requirement in the subsequent year) until the year after the violation has been fully corrected by payment of the late contributions and reimbursement of the plan for lost earnings or profits. If no participant contributions were received or withheld by the employer during the plan year, answer "No."

An employer holding participant contributions commingled with its general assets after the earliest date on which such contributions can reasonably be segregated from the employer's general assets will have engaged in a prohibited use of plan assets (see ERISA section 406). If such a nonexempt prohibited transaction occurred with respect to a disqualified person (see

Code section 4975(e)(2)), file IRS Form 5330, Return of Excise Taxes Related to Employee Benefit Plans, with the IRS to pay any applicable excise tax on the transaction.

Line 8b. Check "Yes" if any nonexempt transaction with a party-in-interest occurred. Do not check "Yes" with respect to transactions that are: (1) statutorily exempt under Part 4 of Title I of ERISA; (2) administratively exempt under ERISA section 408(a); (3) exempt under Code sections 4975(c) or 4975(d); (4) the holding of participant contributions in the employer's general assets for a welfare plan that meets the conditions of ERISA Technical Release 92-01; or (5) delinquent participant contributions or delinquent loan repayments reported on line 8a. You may indicate that an application for an administrative exemption is pending. If you are unsure whether a transaction is exempt or not, you should consult either with a qualified public accountant, legal counsel, or both. If the plan is a qualified pension plan and a nonexempt prohibited transaction occurred with respect to a disqualified person, an IRS Form 5330 is required to be filed with the IRS to pay the excise tax on the transaction. Plans that check "Yes" must enter the amount.

Nonexempt transactions. Nonexempt transactions with a party-in-interest include any direct or indirect:

A. Sale or exchange, or lease, of any property between the plan and a party-in-interest.

B. Lending of money or other extension of credit between the plan and a party-in-interest.

C. Furnishing of goods, services, or facilities between the plan and a party-in-interest.

D. Transfer to, or use by or for the benefit of, a party in-interest, of any income or assets of the plan.

E. Acquisition, on behalf of the plan, of any employer security or employer real property in violation of ERISA section 407(a).

F. Dealing with the assets of the plan for a fiduciary's own interest or own account.

G. Acting in a fiduciary's individual or any other capacity in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries.

H. Receipt of any consideration for his or her own personal account by a party-in-interest who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

Party-in-Interest. For purposes of this form, party-in interest is deemed to include a disqualified person. *See* Code section 4975(e)(2). The term "party-in-interest" means, as to an employee benefit plan:

A. Any fiduciary (including, but not limited to, any administrator, officer, trustee, or custodian), counsel, or employee of the plan;

B. A person providing services to the plan;

C. An employer, any of whose employees are covered by the plan;

D. An employee organization, any of whose members are covered by the plan;

E. An owner, direct or indirect, of 50% or more of:

1. the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation;

2. the capital interest or the profits interest of a partnership; or

3. the beneficial interest of a trust or unincorporated enterprise which is an employer or an employee organization described in C or D;

F. A relative of any individual described in A, B, C, or E;

G. A corporation, partnership, or trust or estate of which (or in which) 50% or more of:

1. the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,

2. the capital interest or profits interest of such partnership, or

3. the beneficial interest of such trust or estate, is owned directly or indirectly, or held by persons described in A, B, C, D, or E;

H. An employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10% or more shareholder directly or indirectly, of a person described in B, C, D, E, or G, or of the employee benefit plan; or

I. A 10% or more (directly or indirectly in capital or profits) partner or joint venture of a person described in B, C, D, E, or G.

Line 8c. You must check "Yes" if any benefits due under the plan were not timely paid or not paid in full. This would include required minimum distributions to 5% owners who have attained 72 whether or not retired and/or non-5% owners who have attained 72 and have retired or separated from service; see Code section 401(a)(9). Include in this amount the total of any outstanding amounts that were not paid when due in previous years that have continued to remain unpaid.

Note: In the absence of other guidance, filers do not need to report on this line unpaid required minimum distribution (RMD) amounts for participants who have retired or separated from service, or their beneficiaries, who cannot be located after reasonable efforts or where the plan is in the process of engaging in such reasonable efforts at the end of the plan year reporting period. Plan administrators and employers should review their plan documents for written procedures on locating missing participants. Although the Department of Labor's Field Assistance Bulletin 2014-01 is specifically applicable to terminated defined contribution plans, employers and plan administrators of ongoing plans may want to consider periodically using one or more of the search methods described in the Field Assistance Bulletin in connection with making reasonable efforts to locate RMD-eligible missing participants.

Line 9a. Check "Yes" if all of the plan assets (including insurance/annuity contracts) were distributed to the participants and beneficiaries, legally transferred to the control of another plan, or brought under the control of the PBGC.

Line 9b. Enter information concerning assets and/or liabilities transferred from this plan to another plan(s) (including spinoffs) during the plan year. A transfer of assets or liabilities occurs when there is a reduction of assets or liabilities with respect to one plan and the receipt of these assets or the assumption of these liabilities by another plan. Enter the name, plan sponsor EIN, and PN of the transferee plan(s) involved on lines 9b(1), (2), and (3), respectively.

Do not use a SNN in place of an EIN or include an attachment that contains visible SSN.

Note. A distribution of all or part of an individual participant's account balance that is reportable on Form 1099-R should not be included on line 9c.

IRS Form 5310-A, Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business, must be filed at

least 30 days before any plan merger or consolidation or any transfer of plan assets or liabilities to another plan. There is a penalty for not filing IRS Form 5310-A on time.

Line 10. Check "Yes" if this is a defined contribution plan subject to the minimum funding requirements of Code section 412.

Line 11a. Check "Yes" if this plan was permissively aggregated with another plan to satisfy the requirements of Code sections 410(b) and 401(a)(4). Generally, each single plan must separately satisfy the coverage and nondiscrimination requirements. However, generally, an employer may designate two or more separate plans as a single plan for purposes of applying the ratio percentage test of Treasury Regulations section 1.410(b)-2(b)(2) or the nondiscriminatory classification test of Treasury Regulations section 1.410(b)-4. Two or more plans that are permissively aggregated and treated as a single plan for purposes of the minimum coverage test of Code section 410(b) must also be treated as a single plan for purpose of the nondiscrimination test under Code section 401(a)(4). *See* Treasury Regulations sections 1.410(b)-7(d) and 1.401(a)(4)-(9)(a) for more information.

Line 11b. Check the applicable method used to satisfy the nondiscrimination requirements of Code section 401(k). A safe harbor 401(k) plan is similar to a traditional 401(k) plan but, among other things, it must provide for employer contributions. These contributions may be employer matching contributions, limited to employees who defer, or employer contributions made on behalf of all eligible employees, regardless of whether they make elective deferrals. The safe harbor 401(k) plan is not subject to the complex annual nondiscrimination tests that apply to traditional 401(k) plans. Check "Design-based safe harbor method" if this is a safe harbor 401(k) plan, that is, a SIMPLE 401(k) plan under Code section 401(k)(11), a safe harbor 401(k) plan under Code section 401(k)(12), or a qualified automatic contribution arrangement under Code section 401(k)(13). If the plan, by its terms, does not satisfy the safe harbor method, it generally must satisfy the regular nondiscrimination test, known as the actual deferral percentage (ADP) test. Check the appropriate

box to indicate if the plan uses the "current year" ADP test or the "prior year" ADP test. Check "current year" ADP test if the plan uses the current year testing method under which the ADP test is performed by comparing the current plan year's ADP for highly compensated employees (HCEs) with the current plan year's (rather than the prior plan year's) ADP for nonhighly compensated employees (NHCEs). Check all boxes that apply for a plan that tests different groups of employees on a disaggregated basis. Check "N/A" if the plan is not required to test for nondiscrimination under Code section 401(k)(3), such as a plan in which no HCE is benefiting.

Line 12. If a plan sponsor or an employer adopted a pre-approved plan that relied on a favorable Opinion Letter of a pre-approved plan, enter the date of the most recent favorable Opinion Letter issued by the IRS and the Opinion Letter serial number listed on the letter.

Part VII – Accountant's Opinion for Individual Participating Plan

Line 13. If any plans participating in the arrangement have 100 participants or more, using the same rules for counting participants as for individual plan filings, including the "80 to 120" rule at 29 CFR 2520.103-1(d), each such plan must be audited and an IQPA report and audited financial statements for such plan must be attached to the Schedule DCG for that participating plan. The audit and its report must follow the same rules as required for a plan that is filing its own Form 5500 Annual Return/Report and not having any of its reporting obligations satisfied by the filing of a Form 5500 by a DCG. *See* Instructions to Schedule H, Line 3.

Line 13a. These boxes identify the type of opinion offered by the IQPA. The plan administrator should confirm with their IQPA whether the opinion was an unmodified, qualified, disclaimer of, or adverse opinion before answering Line 13a. Line 13a(1). Check if an unmodified opinion was issued pursuant to SAS 136. Generally, an unmodified opinion is issued when the IQPA concludes that the plan's financial statements are presented fairly, in all material respects, in accordance with

the applicable financial reporting framework (generally accepted accounting principles (GAAP) or another basis such as modified cash or cash basis). This also includes the form of opinion that SAS 136 permits an IQPA to issue when the IQPA has performed an ERISA section 103(a)(3)(C) audit pursuant to 29 CFR 2520.103-8 or 29 CFR 2520.103-12, or both, and had no modifications. Under 29 CFR 2520.103-8, the examination and report of an IQPA does not need to extend to statements or information regarding assets held by a bank, similar institution, or insurance carrier that is regulated and supervised and subject to periodic examination by a state or federal agency provided that the statements or information are prepared by and certified to by the bank or similar institution or the insurance carrier. The term ''similar institution'' as used here does not extend to securities brokerage firms (see DOL Advisory Opinion 93-21A). Under 29 CFR 2520.103-12, an audit of an employee benefit plan does not need extend to the investments in a pooled investment fund that files a separate audited Form 5500 as a 103-12 IE. For more information on filing requirements for 103-12 IEs, See Section 4: What to File. Neither of these regulations exempt the plan administrator from engaging an IQPA nor from attaching the IQPA's report to the Schedule DCG.

Line 13a(2). Check if a qualified opinion was issued. Generally, a qualified opinion is issued by an IQPA when (a) the IQPA, having obtained sufficient appropriate audit evidence, concludes that misstatements, individually or in the aggregate, are material but not pervasive to the financial statements or (b) the IQPA is unable to obtain sufficient appropriate audit evidence on which to base the opinion, but the auditor concludes that the possible effects on the financial statements of undetected misstatements, if any, could be material but not pervasive.

Line 13a(3). Check if a disclaimer of opinion was issued. A disclaimer of opinion is issued when the IQPA is unable to obtain sufficient appropriate audit evidence on which to base the opinion, and the IQPA concludes that the possible effects on the financial statements of undetected misstatements, if any, could be both material and pervasive.

Line 13a(4). Check if the plan received an adverse accountant's opinion. Generally, an adverse opinion is issued by an IQPA Instructions for Schedule H (Form 5500) -37- when the IQPA having obtained sufficient appropriate audit evidence, concludes that misstatements, individually or in the aggregate, are both material and pervasive to the financial statements.

Line 13b. Check "DOL Regulation 2520.103-8" or "DOL Regulation 2520.103-12(d)" (or both boxes, if applicable) if the IQPA performed an ERISA Section 103(a)(3)(C) audit of the plan's financial statements pursuant to DOL regulations 29 CFR 2520.103-8, 29 CFR 2520.103-12(d), or under both. If it was not performed pursuant to 29 CFR 2520.103-8 or 29 CFR 2520 103-12(d), check box (3). Note. These regulations do not exempt the plan administrator from engaging an IQPA or from attaching the IQPA's report to the Form 5500. If you check box 103-8 or 103-12(d) or both, you must also check the appropriate box on line 13a to identify the type of opinion offered by the IQPA.

Line 13c. Enter the name and EIN of the accountant (or accounting firm) in the space provided on line 13c. Do not use a SSN or any portion thereof in lieu of an EIN. The Schedule DCG is open to public inspection, and the contents are public information and are subject to publication on the Internet. Because of privacy concerns, the inclusion of a SSN or any portion thereof on this Schedule DCG may result in the rejection of the filing.

APPENDIX C –PROPOSED CHANGES TO PARTICIPATING EMPLOYER INFORMATION UNDER ERISA 103(g) TO 2021 FORM 5500/FORM 5500-SF INSTRUCTIONS

To implement the SECURE Act's amendment of section 103(g) of ERISA, the instructions for the multiple-employer plan check box on Part I, line A of the 2021 Form 5500 and Form 5500-SF would be modified as follows:

- The participating employer information updated to add reporting of "aggregated account balance" information.
- Pooled employer plans would be required to include in the Section 103(g) attachment new "Pooled Employer Plan Information," using the format provided in the instructions.
- The current graphic in the Form 5500 and Form 5500-SF instructions for Part I, Line A "Box for Multiple Employer Plan" entitled "Multiple-Employer Plan Participating Employer Information," for the Section 103(g) attachment would be replaced with the following.

Multiple-Employer Plan Participating Employer Information
(Insert Name of Plan and EIN/PN as shown on the Form 5500)

Participating Employer Information

All multiple-employer pension plans must complete elements 1-4. Multiple-employer welfare plans are required to complete elements 1, 2, and 3 only. Multiple-employer welfare plans that are unfunded, fully insured, or a combination of unfunded/insured and exempt under 29 CFR 2520.104-44 from the obligation to file financial statements with their annual report are required to complete elements 1 and 2 only. Complete as many entries as needed to report the required information for all participating employers in the plan.

1. Name of participating employer	**2.** EIN	**3.** Percent of Total Contributions for the Plan Year	**4.** Aggregate Account Balances Attributable Participating Employer
1. Name of participating employer	**2.** EIN	**3.** Percent of Total Contributions for the Plan Year	**4.** Aggregate Account Balances Attributable Participating Employer

Pooled Employer Plan Information

Only pooled employer plans complete this section.
5. Has the pooled plan provider (identified as the plan sponsor and administrator in Part II of the Form 5500) acknowledged in writing that it is the named fiduciary? [] Yes [] No
6. Has the pooled plan provider (identified as the plan sponsor and administrator in Part II of the Form 5500) acknowledged in writing that it is the named fiduciary and plan administrator under section 3(16) of ERISA? [] Yes [] No
7. Is the pooled plan provider currently in compliance with the Form PR (Pooled Plan Provider Registration Statement) requirements? (See instructions and 29 CFR 2510.3-44). .[] Yes [] No

7a If "Yes" is checked, enter the AckID for the most recent Form PR that was required to be filed under the Form PR filing requirements. (Failure to enter a valid AckID will subject the Form 5500 filing for any PEP operated by the pooled plan provider to rejection as incomplete.)

AckID _____

APPENDIX D –PROPOSED CHANGES TO 2022 FORM M-1 AND INSTRUCTIONS

1. Proposed Changes To 2022 Form M-1—Report for Multiple Employer Welfare Arrangements (MEWAS) and Certain Entities Claiming Exceptions (ECES)

- A new Part IV would be added to the 2022 Form M-1 to read as follows:

PART IV MEWA PARTICIPATING EMPLOYER INFORMATION

Only MEWAs are required to complete Part IV. If this filing is an annual report, complete boxes 22a-22f. If this filing is a registration filing, complete boxes 22a and 22b only.

Important. MEWAs that are unfunded, fully insured or combination unfunded/insured complete boxes 22a and 22b only.

Complete as many repeating entries as needed to identify all participating employers in the plan.

22a. Name of Participating Employer	**22b.** EIN	**22c.** Percentage of Total Contributions for the Plan Year

CAUTION. Do not individually list information for self-employed individuals or other individuals participating in the MEWA that are not associated with a particular participating employer. Providing identifying information for individuals may result in rejection of this filing. If there are any such individuals in the MEWA, answer "yes" to line 22d and provide the total contribution information for all such individuals on box 22e, without providing names or other identifying information.

22d. Does the MEWA include any self-employed individuals or individuals who are participants or beneficiaries in the MEWA that are not associated with a particular participating employer?

[] Yes [] No

22e. If "Yes," enter a good faith estimate of percentage of total contributions made by all such individuals that are not listed on box 22a during the plan year.

2. Proposed changes to 2022 Form M-1 Instructions

The instructions for Form M-1 would be amended to add the following accompanying instructions for Part IV. Complete boxes 22c-22f for annual report only.

Part IV- MEWA Participating Employer Information

Important: Only MEWAs are required to complete Part IV. If this filing is an annual report, complete boxes 22a-22f. If this filing is a registration filing, complete boxes 22a and 22b only.

MEWAs that are unfunded, fully insured or combination unfunded/insured as described in 29 CFR 2520.104-44 complete boxes 22a and 22b only.

Box 22a and 22b. Enter each participating employer in the MEWA during the plan year, identified by name and EIN number. Any employer who was obligated to make contributions to the

MEWA for the plan year, made contributions to the MEWA for the plan year, or whose employees were participants covered under the MEWA is a "participating employer" for this purpose.

CAUTION. Enter the EIN of the participating employer. Do not enter a SSN in response to questions asking for an EIN. Because of privacy concerns, the inclusion of a SSN on the Form M-1 or on an attachment that is open to public inspection may result in the rejection of the filing.

Box 22c. Enter a good faith estimate of the participating employer's percentage of the total contributions made by all participating employer (including the total contribution amount for individuals reported on box 22d) during the plan year. If a participating employer made no contributions for the plan year (including participant contributions), enter "-0-" on line 2c.

Box 22d. If the MEWA includes any self-employed individuals or other individuals participating in the MEWA that are not associated with a particular participating employer, answer "Yes" to box 22d and complete box 22e. Do not identify such individuals on box 22a.

Box 22e. If the answer to box 22d is "Yes," enter a good faith estimate of percentage of total contributions made by such individuals that are not listed on box 22a without providing names or other identifying information.

NOTE. Group insurance arrangements (GIAs) that filed a Schedule D with its Form 5500 for the current plan year are not required to complete Part IV. See the "Who Must File" paragraph in Section 1 and 29 CFR 2520.104- 43 for a description of a GIA and when a GIA may file a consolidated Form 5500 on behalf of participating plans in the GIA.

APPENDIX E – OTHER PROPOSED CHANGES TO 2022 FORM 5500, FORM 5500-SF, FORM 5500-EZ, SCHEDULES and INSTRUCTIONS

1. Proposed Changes to Instructions to 2022 Form 5500 and Form 5500-SF for Part I, "Multiple Employer Plan Checkbox."

- **Instructions for 2022 Form 5500.** The instructions for Part I, Line A - "Box for Multiple-Employer Plan" would be modified as follows:

- Second paragraph - Delete the phrase "multiple-employer pension plans" and add the phrase "and not required to file a Form M-1 (Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)), for example, multiple-employer welfare plans providing life or disability benefits," after the phrase "multiple-employer welfare plans required to file a Form 5500."

- Third paragraph – Delete the phrase "Multiple-Employer Plan Participating Employer Information" and replace with the phrase "Participating Employer Information for Multiple-Employer Welfare Plan Not Providing Medical Benefits." [47]

Replacing the current graphic in the Form 5500 for Part I, Line A "Box for Multiple-Employer Plan" entitled "Multiple-Employer Plan Participating Employer Information," with the following: **Participating Employer Information for Multiple-Employer Welfare Plan Not Providing Medical Benefits (Insert Name of Plan and EIN/PN as shown on the Form 5500)**		
1. Name of participating employer	**2.** EIN	**3.** Percent of Total Contributions for the Plan Year
1. Name of participating employer	**2.** EIN	**3.** Percent of Total Contributions for the Plan Year

- Add the following "Note" paragraph after the graphic.

Note. Do not report the participating employer information as an attachment for multiple-employer pension plans or multiple-employer welfare plans offering or providing medical benefits.

[47] For 2022, it would be expected that this information would be entered as structured repeating line items or in a format that would be imported into the system, rather than a nonstandard, read-only attachment.

Multiple-employer pension plans report the participating employer information on Schedule MEP. Multiple-employer welfare plans that offer or provide medical benefits report the participating employer information on Form M-1 (Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)).

- The accompanying instructions for the "Box for Multiple-Employer Plan" on the 2021 Form 5500-SF at Part I, line A, Annual Report Identification Information would be revised to read the same as the instructions for the 2022 Form 5500 described above, except all references to "Form 5500" would be changed to "Form 5500-SF."

2. Proposed Changes to 2022 Schedule H and Instructions to Standardize Data Collection For Schedule H, Line 4i Schedules of Assets

- **Instructions for Schedule H.** Instructions for Part IV, line 4i of the 2022 Schedule H would be modified to read as follows:

Line 4i. **Schedules of Assets**. Check "Yes" in elements (1) and/or (2) and complete, as appropriate, the "line 4i(1) Schedule of Assets Held for Investment at End of Year" and the "line 4i(2) Schedule of Assets Acquired and Disposed of During the Plan Year." You may not create your own schedules of assets in the form of an attachment or otherwise. You must complete the schedule through IFile or using EFAST-approved third-party software. If the plan both disposed of assets during the plan year and held assets for investment at end of year, you must complete both the lines 4i(1) and 4i(2) schedules. Generally, plans that are ongoing must answer "Yes" to line 4i(1) and complete the "line 4i(1) Schedule of Assets Held for Investment at End of Year."

Notes: (1) Participant loans under an individual account plan with investment experience segregated for each account, that are made in accordance with 29 CFR 2550.408b-1 and that are

secured solely by a portion of the participant's vested accrued benefit, may be aggregated for reporting purposes in line 4i. Under identity of borrower enter "Participant loans," under rate of interest enter the lowest rate and the highest rate charged during the plan year (e.g., 8%–10%), under the cost and proceeds columns enter zero, and under current value enter the total amount of these loans. (2) Column (d) cost information for the line 4i(1) Schedule of Assets Held for Investment at End of Year and the column (c) cost of acquisitions information for the line 4i(2) Schedule of Assets Disposed of During the Plan Year may be omitted when reporting investments of an individual account plan that a participant or beneficiary directed with respect to assets allocated to his or her account (including a negative election authorized under the terms of the plan). Likewise, cost information for investments in Code sections 403(b)(1) annuity contracts and Code section 403(b)(7) custodial accounts may also be omitted. (3) Investments in Code section 403(b)(1) annuity contracts and Code section 403(b)(7) custodial accounts generally may also be treated as one asset held for investment for purposes on the line 4i schedules. For Code section 403(b)(7) accounts, show the corresponding line 1b(5)(A) categories to show the types of investment accounts.

Line 4i(1). Schedule of Assets Held for Investment at End of Year. Assets held for investment purposes for purposes of the line 4i(1) Schedule of Assets Held for Investment at End of Year include all investment assets held by the plan on the last day of the plan year other than cash and cash equivalents reported on Schedule H, line 1a. You must complete the Schedule of Assets Held for Investment at End of Year if you answered "Yes" to line 4(i)(1).

Complete as many entries in each element as needed to identify all assets held for investment at end of year. Although a format is shown in the instructions for informational purposes, you cannot create your own schedules of assets, but must complete the schedules through IFile or using EFAST-approved third-party software.

Schedule H, Line 4i(1) Schedule of Assets Held for Investment				
a Check if issuer, borrower, lessor or similar party is a party-in-interest []	**b** Name of issuer, borrower, lessor, or similar party	**c** Check if asset is hard-to-value asset []	**d** CUSIP, CIK, LEI, NAIC Company Code, other registration number:	**e** Cost
f(1) Indicate Sch. H, line 1b asset category. **(2)** [] Check here if entry in **f(1)** is held through a CCT or PSA that did not file a Form 5500. **(3)** [] Check here if the asset is a designated investment alternative in a defined contribution plan **(4)** [] Check here if the asset is a qualified default investment alternative in a defined contribution plan **(5)**[] Check here if the asset is held in a participant-directed brokerage account that is required to be broken out and separately reported (see instructions for reporting assets held through a participant-directed brokerage account)	**g** Description of investment, including, as applicable share class, maturity date, rate of interest, par or maturity value, including whether asset/investment is subject to surrender charge. See instructions for reporting assets held through a participant-directed brokerage account.	**h** Current value	**i.** If a checkbox for **f(3)** or **f(4)** is checked, enter the total annual operating expenses for the designated investment alternative expressed as a percentage of assets that was furnished to participants and beneficiaries in their most recent "404a-5 statement.	

For each asset held directly by the plan or investing filing entity, complete elements (a)-(i).

Participant-directed brokerage account assets reported in the aggregate on line 1c(15) generally may be treated as one asset held for investment for purposes here, except investments in tangible personal property, loans, partnership or joint venture interests, real property, employer securities, and investments that could result in a loss in excess of the account balance of the participant or beneficiary who directed the transaction must be reported as separate aggregations of assets on line 4i(1), with an indication of which of the line 1c breakouts on which that the asset was reported in the balance sheet.

Element (a). Check the box in element a if the issuer of the investment is a person known to be a party-in-interest to the plan. This includes when the seller, issuer, lender, or similar party is

the employer, employee organization, a service provider to the plan, or other party interest, including a subcontractor or affiliate.

Element (b). Enter the name of the seller, issuer, lender, or similar party. If the person is a plan sponsor, service provider, or DFE also identified on the Form 5500, Schedule C or any other of the Schedule H line 4 schedules, or is a DFE that files its own Form 5500, use the same name in all places.

Element (c). Check here if the asset is a "hard-to-value" asset. Assets that are not listed on any national exchanges or over-the-counter markets, or for which quoted market prices are not available from sources such as financial publications, the exchanges, or the National Association of Securities Dealers Automated Quotations System (NASDAQ), are required to be identified as hard-to-value assets on the Schedule of Assets Held for Investment at End of Year. Bank collective investment funds or insurance company pooled separate accounts that are primarily invested in assets that are listed on national exchanges or over-the-counter markets and are valued at least annually need not be identified as hard-to-value assets. CCTs or PSAs invested primarily in hard-to-value assets must also be identified as a hard-to-value asset. A non-exhaustive list of examples of assets that would be required to be identified as hard-to-value on the proposed schedules of assets is: non-publicly traded securities, real estate, private equity funds; hedge funds; and real estate investment trusts (REITs). Check this box for all assets designated as "level 3" in the accompanying IQPA report.

Element (d). If the person is a plan sponsor, service provider, or direct filing entity also identified on the Form 5500, Schedule C, or Schedule D, or any other of the Schedule H line 4 schedules, or is a DFE that files its own Form 5500, use the same identification numbers in all places. If the person identified in element c, has a CUSIP, CIK number, LEI, NAIC Company

Code, or other government or market exchange registration or identity number, you must include all that apply here.

Element (e). Enter the acquisition cost of the asset.

Element (f). Enter in element f(1) which category the asset was part of the total on line 1b and check all applicable boxes.

Element (g). Enter a description of the investment, including, as applicable maturity date, rate of interest, par, or maturity value, including whether asset/investment is subject to surrender charge. Include any restriction on transferability of corporate securities. (Include lending of securities permitted under Prohibited Transactions Exemption 81-6.)

Element (h). Enter current value. For purposes of the Form 5500, "current value" means fair market value where available. Otherwise, it means the fair value as determined in good faith under the terms of the plan by a trustee or a named fiduciary, assuming an orderly liquidation at time of the determination. See ERISA section 3(26).

Element i. If the checkbox for element f(3) **or f(4)** is checked, enter the total annual operating expenses for the designated investment alternative expressed as a percentage of assets that was furnished to participants and beneficiaries in their most recent 404a-5 statement.

Line 4i(2) Assets Acquired and Disposed of During Plan Year. Complete as many entries in each element as needed to identify all acquired and disposed of during the year.

Although the format is shown in the instructions for informational purposes, you cannot create your own schedules of assets, but must complete the schedules through IFile or using EFAST-approved third-party software.

You must identify on the line 4i(2) Schedule each investment asset sold during the plan year except:

1. Debt obligations of the U.S. or any U.S. agency.

2. Interests issued by a company registered under the Investment Company Act of 1940 (e.g., a mutual fund).

3. Bank certificates of deposit with a maturity of one year or less.

4. Commercial paper with a maturity of 9 months or less if it is valued in the highest rating category by at least two nationally recognized statistical rating services and is issued by a company required to file reports with the Securities and Exchange Commission under section 13 of the Securities Exchange Act of 1934.

5. Participations in a bank common or collective trust.

6. Participations in an insurance company pooled separate account.

7. Securities purchased from a broker-dealer registered under the Securities Exchange Act of 1934 and either: (1) listed on a national securities exchange and registered under section 6 of the Securities Exchange Act of 1934 or (2) quoted on NASDAQ.

Assets acquired and disposed of during the plan year shall not include any investment that was not held by the plan on the last day of the plan year if that investment is reported in the annual report for that plan year in any of the following:

1. The schedule of loans or fixed income obligations in default required by Schedule G, Part I;

2. The schedule of leases in default or classified as uncollectible required by Schedule G, Part II;

3. The schedule of nonexempt transactions required by Schedule G, Part III; or

4. The schedule of reportable transactions required by Schedule H, line 4j.

You must complete the "Schedule of Assets Acquired and Disposed of During the Plan Year" if you answered "Yes" to line 4(i)(2).

Schedule H, Line 4i(2) Schedule of Assets Acquired and Disposed of During the Plan Year				
a Check if issuer, borrower, lessor or similar party is party-in-interest []	b Name of issuer, borrower, lessor, or similar party	c Check if asset is hard-to-value asset	d EIN, CUSIP, CIK, LEI, NAIC Company Code, other registration number:	e Indicate Sch. H, line 1c asset category.
f Cost	g Sales price	h Total expenses incurred with disposal of asset, including any termination or surrender charges	i Net gain/loss	j Description of investment, including, as applicable share class, maturity date, rate of interest, par or maturity value, including whether asset/investment is subject to surrender charge. *See* instructions for reporting assets held through a participant-directed brokerage account

Element (a). Indicate in element (a) whether the seller, issuer, lender, or similar party is the employer, employee organization, or other party interest, including a subcontractor or affiliate.

Element (b). Enter the name of the seller, issuer, lender, or similar party. If the person is a plan sponsor, service provider, or direct filing entity also identified on the Form 5500, Schedule C, or Schedule D, or any other of the Schedule H line 4 schedules, use the same name in all places. If the asset was held through a master trust, 103-12 IE, CCT, or PSA provide the name, EIN and PN of the entity. For DFEs use the same identifying information used on the entity's own Form 5500.

Element (c). Check here if the asset is a "hard-to-value" asset. Check this box for all assets designated as "level 3" in the accompanying IQPA report.

Element (d). In element (d) enter the EIN of issuer, borrower, lessor, similar party. If the person is a plan sponsor, service provider, or direct filing entity also identified on the Form 5500, Schedule C, or Schedule D, or any other of the Schedule H, line 4 schedules, use the same name in all places. Also enter, separated by commas, if applicable, the CUSIP, CIK, LEI, NAIC Company Code, or other registration number.

Element (e). Enter in element (e) in which category the asset was part of the total on line 1(b).

Element (f). Enter the acquisition cost here.

Element (g). Enter the sale price.

Element (h). Enter the total expenses incurred with disposal of asset, including any termination or surrender charges.

Element (i). Enter the net gain (loss) on the asset.

Element (j). Enter a description of the investment, including maturity date, rate of interest, collateral, par, or maturity value.

3. Proposed Changes to Form 5500, Form 5500-SF and Instructions on counting participants for determining small plan filing status for defined contribution plans

- **Instructions to 2022 Form 5500.** Instructions to Section 4, "What to File" section of the 2022 Form 5500 would be modified to delete the paragraph above the "Exceptions" section and replace with the following paragraph:

To determine whether a plan is a "small plan" or "large plan," for defined benefit pension plans and welfare plans, use the number reported on Form 5500, line 5. Defined contribution pension plans use the number reported on the Form 5500 line 6g(1), except use the number reported on the Form 5500 line 6g(2) for defined contribution pension plans that check the "first return/report box on Part I, line B.

- **Instructions to 2022 Form 5500.** Instructions to "80-120 Participant Rule" paragraph in Section 4, "What to File," "Exceptions" section of the 2022 Form 5500 would be modified by deleting the phrase "on line 5" in the first sentence and deleting the phrase "line 5 of the" in the second sentence.

- **Instructions to 2022 Form 5500.** Instructions to "Short Plan Year Rule" paragraph in Section 4, "What to File," "Exceptions" section of the 2022 Form 5500 would be modified by amending the last sentence to eliminate the reference at the end to Line 5:

(1) **Short Plan Year Rule:** ***

If such an election was made for the prior plan year, the 2022 Form 5500 must be completed following the requirements for a large plan, including the attachment of the Schedule H and the accountant's reports, regardless of the number of participants entered in Part II.

- **2022 Form 5500.** Line 6 of Part II of 2022 Form 5500 would be modified by amending line 6, renumbering 6g as line 6g(2) and adding line 6g(1), to read as follow:

6. Number of participants (welfare plans complete only Lines **6a(1), 6(a)(2), 6b, 7c, 7d, and 7g(3))**.		
* * *		
g(1) Number of participants with account balances as of the beginning of the plan year (only defined contribution plans complete this item).....	**6g(1)**	
g(2) Number of participants with account balances as of the end of the plan year (only defined contribution plans complete this item).....	**6g(2)**	

- **Instructions to 2022 Form 5500.** Instructions to line 6g of Part II of 2022 Form 5500 would be modified to read as follows:

Line 6. Number of participants (welfare plans complete only Lines 6a(1), 6(a)(2), 6b, 7c, 7d, and 7g(3)).

Line 6g. Enter in Line 6g(1) the number of participants who have account balances at the beginning of the plan year. Enter in Line 6g(2) the number of participants included on line 6f (total participants at the end of the plan year) who have account balances at the end of the plan year. For example, for a Code section 401(k) plan the number entered on line 6g should be the number of participants counted on line 6f who have made a contribution, or for whom a contribution has been made to the plan for this plan year or any prior plan year. Welfare benefit plans and defined benefit plans should leave line 6g blank.

- **Instructions to 2022 Form 5500-SF.** Instructions to "Who May File" section of the 2022 Form 5500-SF would be modified by amending paragraph (1) to read as follows.

1. The plan (a) covered fewer than 100 participants at the beginning of the plan year 2022, or (b) under 29 CFR 2520.103-1(d) was eligible to and filed as a small plan for plan year 2022 and did not cover more than 120 participants at the beginning of plan year 2020. To determine whether

a plan is eligible, for defined benefit pension plans and welfare plans, use the number reported on Form 5500-SF line 5a. Defined contribution pension plans use the number reported on the Form 5500-SF line 5c(1), except use the number reported on the Form 5500-SF line 5c(2) for defined contribution pension plans that check the "first return/report box on Part I, line B;

- **2022 Form 5500-SF.** Line 5c of Part II of 2022 Form 5500-SF will be renumbered as line 5c(2) and line 5c(1) would be added to read as follow:

c(1) Number of participants with account balances as of the beginning of the plan year (only defined contribution plans complete this item).....	**5c(1)**	
c(2) Number of participants with account balances as of the end of the plan year (only defined contribution plans complete this item).....	**5c(2)**	

- **Instructions to 2022 Form 5500-SF.** Instruction to second sentence of line 5 of Part II of 2022 Form 5500-SF will be deleted and replaced with the following two sentences as follows.

Line 5. ***

Enter in element (c)(1) the number of participants who have account balances with account balances as of the beginning of the plan year. Enter in element (c)(2) the number of participants included on line 5b (total participants at the end of the plan year) who have account balances at the end of the plan year.

- **Instructions to 2022 Form 5500-SF.** Instruction to line 6 of Part II of 2022 Form 5500-SF would be modified by amending paragraph (1) to read as follows:

1. The plan (a) covered fewer than 100 participants at the beginning of the plan year 2022, or (b) under 29 CFR 2520.103-1(d) was eligible to and filed as a small plan for plan year 2019 and did not cover more than 120 participants at the beginning of plan year 2020 (see instructions for Who May File Form 5500-SF on counting the number of participants to determine whether a plan is eligible);

4. Proposed Changes to 2022 Schedule MB, Schedule SB and Schedule R, and their Instructions to Improve PBGC Reporting.

- **Instructions to 2022 Schedule MB.** Instructions for line 3 of the 2022 Schedule MB would be modified to read as follows:

Line 3. Contributions Made to Plan. Show all employer and employee contributions for the plan year. Include employer contributions made not later than 2½ months (or the later date allowed under Code section 431(c)(8) and ERISA section 304(c)(8)) after the end of the plan year. Show only contributions actually made to the plan by the date this Schedule MB is signed.

Add the amounts in both columns (b) and (c) and enter both results on the total line. All contributions must be credited toward a particular plan year.

If any of the contributions reported in line 3 include amounts owed for withdrawal liability, report in line 3(d) the total withdrawal liability amounts included. Attach a list showing the date and amount of each withdrawal liability amount included, broken down between periodic amounts and lump sum amounts. -Label this attachment "***Schedule MB, Line 3(d) – Withdrawal Liability Amounts***".

Schedule MB Line 3(d) – Withdrawal Liability Amounts			
Payment Date	**Periodic Amounts**	**Lump Sum Amounts**	**Total Amounts**

- **2022 Schedule MB.** Line 4f of the 2022 Schedule MB would be modified to read as follows:

f If the plan is in critical status or critical and declining status, and is: • Projected to emerge from critical status within 30 years, enter the plan year in which it is projected to emerge;	**4f**	

• Projected to become insolvent within 30 years, enter the plan year in which insolvency is expected and check here ☐ • Neither projected to emerge from critical status nor become insolvent within 30 years, enter "9999."		

- **Instructions to 2022 Schedule MB.** Instructions for line 4f of the 2022 Schedule MB would be modified to read as follows:

Line 4f. If Code C (Critical Status) or Code D (Critical and Declining Status) was entered on line 4b you must complete line 4f as follows:

If, based on the most recent actuarial certification for the plan year and the most recently adopted rehabilitation plan, the plan is:

- Projected to emerge from critical status within 30 years, enter the plan year in which the plan is projected to emerge from critical status.
- Projected to become insolvent within 30 years, check the box provided, enter the plan year in which the insolvency is expected. In addition, attach an illustration showing year-by-year cash flow projections for the period ending with the year the plan is projected to become insolvent (or the 20th year after the valuation year if earlier) and a summary of the assumptions underlying the projections. Label this attachment "***Schedule MB, Line 4f – Cash Flow Projections***".
- Neither projected to emerge from critical status nor become insolvent within 30 years, enter "9999." In addition, attach an illustration showing year-by-year cash flow projections ending with the 20th year after the valuation year and a summary of the assumptions underlying the projections. Label this attachment "***Schedule MB, Line 4f – Cash Flow Projections***".
- **2022 Schedule MB.** Lines 6e and 6f would be modified and line 6i would be added to the 2022 Schedule MB, to read as follows:

6 Checklist of actuarial assumptions		
a Interest rate for 'RPA 94 current liability	**6a**	

		Pre-retirement	Post-retirement
b Rates specified in insurance or annuity contracts		☐ Yes ☐ No ☐ N/A	☐ Yes ☐ No ☐ N/A
c Mortality table code for valuation purposes:			
(1) Males	**6c(1)**		
(2) Females	**6c(2)**		
d Valuation liability interest rate	**6d**	%	%
e Salary scale	**6e**	% ☐ N/A	
f Withdrawal liability interest rate	**6f**	% ☐ N/A	

g Estimated investment return on actuarial value of assets for year ending on the valuation date	**6g**	%
h Estimated investment return on market value of assets for year ending on the valuation date	**6h**	%
i Expense loading included in normal cost reported in line 9b		☐ N/A
(1) If expense load is described as a percentage of normal cost, enter the assumed percentage	**6i(1)**	%
(2) If expense load is dollar amount that varies from year to year, enter dollar amount included in line 9b	**6i(2)**	
(3) If neither (1) nor (2) describes the expense load, check the box	**6i(3)**	☐

- **Instructions to 2022 Schedule MB.** Instructions for lines 6e and 6f would be modified and for line 6i would be added to the 2022 Schedule MB, to read as follows:

Line 6e. **Salary Scale.** If a uniform level annual rate of salary increase is used, enter that annual rate. Otherwise, enter the level annual rate of salary increase that is equivalent to the rate(s) of salary increase used. Enter the annual rate as a percentage to the nearest .01 percent, used for a participant from age 25 to assumed retirement age. If the plan's benefit formula is not related to compensation, check the "N/A" box.

Line 6f. Withdrawal Liability Interest Rate. If any employer withdrew from the plan during the plan year, enter the interest rate used to determine the present value of vested benefits for withdrawal liability determinations. If multiple interest rates were used (e.g., select and ultimate rates under ERISA 4044 or blended liabilities reflecting different interest rate structures), report the single equivalent interest rate that produces the same present value of vested benefits for withdrawal liability determinations.

If different interest rates were used for different employers that withdrew during the plan year, report the weighted average interest rate used for this purpose (weighted by the applicable withdrawal liability amount). If no employers withdrew from the plan during the plan year, check "N/A".

Line 6i. Expense Loading Included in Normal Cost. If the normal cost reported in line 9b does not include a load for administrative or investment expenses, check the "N/A" box. Otherwise, provide information in lines 6i(1), 6i(2), or 6i(3), whichever is applicable, about the expense load included in the normal cost. If the expense load is described as a percentage of normal cost, the reported percentage in line 6i(1) should be the expense load as a percent of the unloaded normal cost. For example, if the expense load is 5% of the normal cost, the unloaded normal cost is $100,000 and the reported normal cost is $105,000, enter 5%, not 4.8% (i.e., $5,000/$105,000). Enter rates to the nearest 0.1 percent.

- **2022 Schedule MB.** The title for line 8b would be modified and new lines 8b(3) and 8b(4) would be added to the 2022 Schedule MB to read as follows:

8 Miscellaneous Information		
a If a waiver of a funding deficiency has been approved for this plan year, enter the date (MM-DD-YYYY) of the ruling letter granting the approval	**8a**	
b Demographic, benefit, and contribution information		
(1) Is the plan required to provide a projection of expected benefit payments? (See the instructions.) If "Yes," attach a schedule		☐ Yes ☐ No
(2) Is the plan required to provide a Schedule of Active Participant Data? (See the instructions.)		☐ Yes ☐ No
(3) Is the plan required to provide a projection of employer contributions and withdrawal liability payments? (See instructions.) If "Yes," attach a schedule		☐ Yes ☐ No
(4) If line 8b(1) is "Yes", enter the average age and average monthly benefits, as of the valuation date separately for terminated vested participants and retired participants and beneficiaries receiving payments	**(1) Terminated Vested Participants**	**(2) Retired Participants and Beneficiaries Receiving Payments**
(a) Average age as of the valuation date		
(b) Average monthly benefit as of valuation date		

- **Instructions to 2022 Schedule MB**. Instructions for lines 8b(1) and 8b(2) would be modified and instructions for lines 8b(3) and 8b(4) would be added to the 2022 Schedule MB, to read as follows:

Line 8b(1). Schedule of Projection of Expected Benefit Payments. Check "Yes" only if this is a multiemployer plan covered by Title IV of ERISA that has 500 or more total participants as of the beginning of the plan year (i.e., reported on line 2b(3)(c), column (1)).

If line 8b(1) is "Yes," in an attachment, provide a projection of benefits expected to be paid separately for active participants, terminated vested participants, and retired participants and beneficiaries receiving payments, and for the entire plan (not to include expected expenses) in each of the next fifty years starting with the current plan year of this filing assuming (1) no additional accruals, (2) experience (e.g., termination, mortality, and retirement) are in line with valuation assumptions, (3) no new entrants are covered by the plan, and (4) benefits are paid in the form assumed for valuation purposes. Use the format shown below. The attachment may be provided in a spreadsheet file. Label this attachment "***Schedule MB, Line 8b(1) – Schedule of Projection of Expected Benefit Payments***".

Schedule MB, Line 8b(1) - Schedule of Projection of Expected Benefit Payments

	Expected Annual Benefit Payments			
Plan Year	**Active Participants**	**Terminated Vested Participants**	**Retired Participants and Beneficiaries Receiving Payments**	**Total**
Current Plan Year				
Current Plan Year + 1				
Etc.				
Current plan year + 49				

Line 8b(2). Schedule of Active Participant Data. Check "Yes" only if this is a multiemployer plan covered by Title IV of ERISA that has active participants.

If line 8b(2) is "Yes," attach a schedule of the active plan participant data used in the valuation for this plan year. The attachment may be provided in a spreadsheet file. Use the format shown below and label the attachment "**Schedule MB, Line 8b(2) – Schedule of Active Participant Data**".

Schedule MB, Line 8b(2) – Schedule of Active Participant Data

Attained Age	YEARS OF CREDITED SERVICE											
	Under 1			1 to 4			5 to 9			40 & up		
		Average			Average			Average			Average	
	No	Comp.	Accrued Mon Ben	No	Comp.	Accrued Mon Ben	No	Comp.	Accrued Mon Ben	No	Comp.	Accrued Mon Ben
Under 25												
25 to 29												
30 to 34												
35 to 39												
40 to 44												
45 to 49												
50 to 54												
55 to 59												
60 to 64												
65 to 69												
70 & up												

Expand this schedule by adding columns after the "5 to 9" column and before the "40 & up" column for active participants with total years of credited service in the following ranges: 10 to 14; 15 to 19; 20 to 24; 25 to 29; 30 to 34; and 35 to 39. For each column, enter the number of active participants with the specified number of years of credited service divided according to age group. For participants with partial years of credited service, truncate the total number of years-credited. Years of credited service are the years credited under the plan's benefit formula.

Plans reporting 1,000 or more active participants on line 2b(3)(c), column (1), and using compensation to determine benefits must also provide average compensation data. For each grouping, enter the average compensation of the active participants in that group. For this purpose, compensation is the compensation taken into account for each participant under the plan's benefit

formula, limited to the amount defined under section 401(a)(17) of the Code. Do not enter the average compensation in any grouping that contains fewer than 20 participants.

Plans reporting 1,000 or more active participants on line 2b(3)(c), column (1), must also provide average accrued monthly benefits, as of the valuation date, that are payable at normal retirement age. For each grouping, enter the average accrued monthly benefit that is payable at normal retirement age for the active participants in that group. Do not enter the average accrued monthly benefit in any grouping that contains fewer than 20 participants.

General Rule. In general, data to be shown in each age/service bin includes:

1. the number of active participants in the age/service bin,
2. the average compensation of the active participants in the age/service bin, and
3. the average accrued monthly benefit of the active participants in the age/service bin, using $0 for anyone who has no accrued monthly benefit.

In general, information should be determined as of the valuation date. Average accrued monthly benefits may be determined as of either:

1. the valuation date or
2. the day immediately preceding the valuation date.

Line 8b(3). Schedule of Projection of Employer Contributions and Withdrawal Liability Payments. Check "Yes" only if this is a multiemployer plan covered by Title IV of ERISA that has 500 or more total participants as of the beginning of the plan year (i.e., reported on line 2b(3)(c), column (1)). If line 8b(3) is "Yes," in an attachment, separately provide a projection of employer contributions and withdrawal liability payments expected to be received for the entire plan in each of the next ten years starting with the current plan year of this filing based on the

assumptions used for to determine the plan's status under line 4b. Use the format shown below and label the schedule "***Schedule MB, Line 8b(3) – Schedule of Projection of Employer Contributions and Withdrawal Liability Payments***".

Schedule MB, Line 8b(3) – Schedule of Projection of Employer Contributions and Withdrawal Liability Payments

Plan Year	Employer Contributions	Withdrawal Liability Payments	Total
Current Plan Year			
Current Plan Year + 1			
Etc.			
Current plan year + 9			

Line 8b(4)(a). Average Age. If line 8b(1) is "Yes," enter the average age nearest birthday, as of the beginning of the plan year, separately for terminated vested participants and retired participants and beneficiaries receiving payments.

Line 8b(4)(b). Average Monthly Benefits. If line 8b(1) is "Yes," enter the average monthly benefit, as of the beginning of the plan year payable to terminated vested participants, assuming commencement at normal retirement age and the average monthly benefit paid during the month containing the valuation date to retired participants and beneficiaries receiving payments. Enter the monthly benefits in rounded whole dollars.

- **2022 Schedule SB.** Line 26 would be modified in Part VI of the 2022 Schedule SB to read as follows:

26. Demographic and Benefit Information		
a. Is the plan required to provide a Schedule of Active Participants? If "Yes," see instructions regarding required attachment.		☐ Yes ☐ No
b. Is the plan required to provide a projection of expected benefit payments? (See instructions.) If "Yes," attach a schedule?		☐ Yes ☐ No
c. If line 26b is "Yes," enter the average age and average monthly benefits, as of the valuation date separately for terminated vested participants and retired participants and beneficiaries receiving payments	**(a) Terminated Vested Participants**	**(b) Retired Participants and Beneficiaries**

		Receiving Payments
(1) Average age as of the valuation date		
(2) Average monthly benefit as of valuation date		

- **Instructions to 2022 Schedule SB.** The first two paragraphs of the instructions for line 26 (now line 26a) would be modified to reference line 26a instead of line 26 as shown below. In addition, instructions for lines 26b and 26c would be added as follows:

Line 26a. Schedule of Active Participant Data. Check "Yes" only if (a) the plan is covered by Title IV of ERISA and (b) the plan has active participants.

If line 26a is "Yes," attach a schedule of the active plan participant data used in the valuation for this plan year. Use the format shown on the following page and label the schedule ***"Schedule SB, Line 26a – Schedule of Active Participant Data."***

Line 26b. Schedule of Projection of Expected Benefit Payments. Check "Yes" only if this plan is covered by Title IV of ERISA and has 500 or more total participants as of the valuation date.

If line 26b is "Yes," in an attachment, provide a projection of benefits expected to be paid separately for active participants, terminated vested participants, and retired participants and beneficiaries receiving payments, and for the entire plan (not to include expected expenses) in each of the next fifty years starting with the current plan year of this filing assuming (1) no additional accruals, (2) experience (e.g., termination, mortality, and retirement) are in line with valuation assumptions, (3) no new entrants are covered by the plan, and (4) benefits are paid in the form assumed for valuation purposes. Use the format shown below. The attachment may be provided in a spreadsheet file. Label this attachment "**Schedule SB, Line 26b – Schedule of Projection of Expected Benefit Payments**

Schedule SB, Line 26b - Schedule of Projection of Expected Benefit Payments

	Expected Annual Benefit Payments			
Plan Year	**Active Participants**	**Terminated Vested Participants**	**Retired Participants and Beneficiaries Receiving Payments**	**Total**
Current Plan Year				
Current Plan Year + 1				
Etc.				
Current plan year + 49				

Line 26c(1). Average Age. If 26b is "Yes," enter the average age nearest birthday, as of the valuation date, separately for terminated vested participants and retired participants and beneficiaries receiving payments.

Line 26c(2). Average Monthly Benefits. If 26b is "Yes," enter the average monthly benefit, as of the valuation date payable to terminated vested participants, assuming commencement at normal retirement age and the average monthly benefit paid during the month containing the valuation date to retired participants and beneficiaries receiving payments. Enter the monthly benefits in rounded whole dollars.

- **2022 Schedule SB**. The title for Part IX of the 2022 Schedule SB and line 41 would be modified and replaced with the following:

Part IX	Pension Funding Relief under the American Rescue Plan Act of 2021 (See instructions.)
41	If an election was made to use the extended amortization rule for a plan year beginning on or before December 31, 2021, check the box to indicate the first plan year for which the rule applies. □ 2019 □ 2020 □ 2021

- **Instructions to 2022 Schedule SB**. The **instructions** for Part IX would be modified and replaced with the following:

Part IX – Pension Funding Relief under the American Rescue Plan Act of 2021

Line 41. If an election was made under Code section 403(c)(8) or ERISA section 303(c)(8) to apply the extended amortization rule for a plan year beginning on or before December 31, 2021, check the box to indicate the first plan year for which the rule applies (*i.e.*, the box for the 2019, 2020, or 2021 plan).

- **Instructions to 2022 Schedule R.** Line 13 would be modified in the instructions for Part V of the 2022 Schedule R to read as follows:

Line 13. This line should be completed only by multiemployer defined benefit pension plans that are subject to the minimum funding standards (see Code section 412 and Part 3 of Title I of ERISA). Enter the information on lines 13a through 13e for any employer that, for the plan year, (1) contributed more than five percent of the plan's total contributions or (2) was one of the top ten highest contributors. List employers in descending order according to the dollar amount of their contributions to the plan. Complete as many entries as are necessary to list all employers required to be reported.

5. Proposed Changes to 2022 Schedule H, Schedule I, Form 5500-SF, Form 5500-EZ And Their Instructions To Add New Trust Questions

- **2022 Schedules H and I.** The following Trust Information questions, lines 6a-6d, would be added as new Part V of 2022 Schedule H and Part III of 2022 Schedule I:

Trust Information

Line 6a. Name of trust

Line 6b. Trust EIN

Line 6c. Name of trustee/custodian

Line 6d. Trustee's or custodian's telephone number

- **2022 Form 5500-SF.** Trust Information questions identical to lines 6a-6d of Schedules H and I shown above would be added to 2022 Form 5500-SF as new Part VIII, lines 14a-14d.
- **2022 Form 5500-EZ.** Trust Information questions identical to lines 6a-6d of Schedules H and I shown above would be added to Part II of 2022 Form 5500-EZ as new lines 4a-4d, and current lines 4-11 would be renumbered as lines 5-12.
- **Instructions to 2022 Schedules H and I.** Instructions for new Trust Information questions, lines 6a-6d, would be added as instructions for new Part V of 2022 Schedule H and Part III of Schedule I to read as follows.

Line 6a. Enter the name of the trust. If a plan uses more than one trust, enter the primary trust in which the greatest dollar amount or largest percentage of the plan assets as of the end of the plan year is held. For example, if a plan uses three different trusts, X, Y, and Z, and the percentages of the plan assets are 35%, 45%, and 20%, respectively, Trust Y with 45% of the total plan assets would be entered in line 6a.

Line 6b. Enter the EIN assigned to the employee benefit trust, if one has been issued to the trust. If you do not have a trust EIN, enter the EIN you would use on Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRS, Insurance Contracts,* to report distributions from employee benefit plans and on Form 945, *Annual Return of Withheld Federal Income Tax,* to report amounts of income tax withheld from those payments. Do not enter a SSN.

A trust EIN can be obtained from the IRS by applying on Form SS-4, *Application for EIN.* See the instructions for Form 5500, line 2b, to apply for an EIN. Also see the IRS EIN application link page at *www.irs.gov/businesses* and click on "Employer ID Numbers" for additional information. The EIN is issued immediately once the application information is validated.

Lines 6c and 6d. Enter the name of the trustee or custodian and the trustee's or custodian's telephone number.

- **Instructions to 2022 Form 5500-SF.** Instructions to new Trust Information questions identical to instructions to lines 6a-6d of Schedules H and I shown above would be added to instructions for new Part VIII of 2022 Form 5500-SF, except the line numbers would be lines 14a-14d.

- **Instructions to 2022 Form 5500-EZ.** Instructions to new Trust Information questions identical to instructions to lines 6a-6d of Schedules H and I shown above would be added to instructions for 2200 Form 5500-EZ as lines 4a-4d and current instructions to lines 4-11 would be renumbered as lines 5-12.

6. Proposed Changes to Form 5500 to add new checkboxes for proposed Schedules DCG and MEP.

- **2022 Form 5500**

(1) Line 10(a) of Part II of 2022 Form 5500 would be modified by adding new checkboxes for new schedules: DCG and MEP to read as follow:

10. Check all applicable boxes in 10a and 10b to indicate which schedules are attached and, where indicated, enter the number attached. (See instructions)

a. **Pension Schedules**

***

(4) ☐ ____ **DCG** (Individual Plan Information)

(5) ☐ ____ **MEP** (Multiple-Employer Retirement Plan Information)

7. Proposed Changes to 2022 Schedule R, Form 5500-SF, Form 5500-EZ and Their Instructions to Add New IRS Required Compliance Questions

- **2022 Schedule R**. New Part - IRS Compliance questions, lines 21a, 21b, and 22, would be added to 2022 Schedule R as follows:

IRS Compliance Questions

Line 21a. Does the plan satisfy the coverage and nondiscrimination tests of Code sections 410(b) and 401(a)(4) by combining this plan with any other plans under the permissive aggregation rules? ☐ Yes ☐ No

Line 21b. If this is a Code section 401(k) plan, check the correct box to indicate how the plan is intended to satisfy the nondiscrimination requirements for employee deferrals and employer matching contributions (as applicable) under Code sections 401(k)(3) and 401(m)(2)?

☐ Design-based safe harbor method

☐ "Prior year" ADP test

☐ "Current year" ADP test

☐ N/A __

Line 22. If the plan sponsor is an adopter of a pre-approved plan that received a favorable IRS Opinion Letter, enter the date of the Opinion Letter ___/___/_____ (MMDD YYYY) and the Opinion Letter serial number_____.

- **2022 Form 5500-SF**. New IRS Compliance questions identical to lines 21a, 21b, and 22 of Schedule R shown above would be added to 2022 Form 5500-SF as new Part IX, lines 15a, 15b and 16.

- **2022 Form 5500-EZ.** The following IRS Compliance question would be added to Part V of 2022 Form 5500-EZ as new line 13.

Line 13. If the plan sponsor is an adopter of a pre-approved plan that received a favorable IRS Opinion Letter, enter the date of the Opinion Letter ___/___/_____ (MMDD YYYY) and the Opinion Letter serial number_____.

- **Instructions to 2022 Schedule R.** Instructions for new Part VII-IRS Compliance questions, lines 21a – 21c and 22, would be added to instructions for 2022 Schedule R to read as follows.

Line 21a. Check "Yes" if this plan was permissively aggregated with another plan to satisfy the requirements of Code sections 410(b) and 401(a)(4). Generally, each single plan must separately satisfy the coverage and nondiscrimination requirements. However, generally, an employer may designate two or more separate plans as a single plan for purposes of applying the ratio percentage test of Treasury Regulations section 1.410(b)-2(b)(2) or the nondiscriminatory classification test of Treasury Regulations section 1.410(b)-4. Two or more plans that are permissively aggregated and treated as a single plan for purposes of the minimum coverage test of Code section 410(b) must also be treated as a single plan for purpose of the nondiscrimination test

under Code section 401(a)(4). *See* Treasury Regulations sections 1.410(b)-7(d) and 1.401(a)(4)-(9)(a) for more information.

Line 21b. Check the applicable method used to satisfy the nondiscrimination requirements of Code section 401(k). A safe harbor 401(k) plan is similar to a traditional 401(k) plan but, among other things, it must provide for employer contributions. These contributions may be employer matching contributions, limited to employees who defer, or employer contributions made on behalf of all eligible employees, regardless of whether they make elective deferrals. The safe harbor 401(k) plan is not subject to the complex annual nondiscrimination tests that apply to traditional 401(k) plans. Check "Design-based safe harbor method" if this is a safe harbor 401(k) plan, that is, a SIMPLE 401(k) plan under Code section 401(k)(11), a safe harbor 401(k) plan under Code section 401(k)(12), or a qualified automatic contribution arrangement under Code section 401(k)(13). If the plan, by its terms, does not satisfy the safe harbor method, it generally must satisfy the regular nondiscrimination test, known as the actual deferral percentage (ADP) test. Check the appropriate box to indicate if the plan uses the "current year" ADP test or the "prior year" ADP test. Check "current year" ADP test if the plan uses the current year testing method under which the ADP test is performed by comparing the current plan year's ADP for highly compensated employees (HCEs) with the current plan year's (rather than the prior plan year's) ADP for nonhighly compensated employees (NHCEs). Check all boxes that apply for a plan that tests different groups of employees on a disaggregated basis. Check "N/A" if the plan is not required to test for nondiscrimination under Code section 401(k)(3), such as a plan in which no HCE is benefiting.

Line 22. If a plan sponsor or an employer adopted a pre-approved plan that relied on a favorable Opinion Letter of a pre-approved plan, enter the date of the most recent favorable Opinion Letter issued by the IRS and the Opinion Letter serial number listed on the letter.

- **Instructions to 2022 Form 5500-SF.** Instructions for new IRS Compliance questions identical to instructions to lines 21a – 21c and 22 of 2022 Schedule R shown above would be added as instructions for new Part IX of 2022 Form 5500-SF, except the instruction line numbers would be lines 15a, 15b and 16.

- **Instructions to 2022 Form 5500-EZ.** Instructions for new IRS Compliance question, line 13 would be added to instructions for Part V of 2022 Form 5500-EZ to read as follows.

Line 13. If a plan sponsor or an employer adopted a pre-approved plan that relied on a favorable Opinion Letter of a pre-approved plan, enter the date of the most recent favorable Opinion Letter issued by the IRS and the Opinion Letter serial number listed on the letter.

8. Proposed change to Participant-Count Methodology for Determining Independent Qualified Public Accountant Audit Requirement for Individual Account Plans

- **2022 Form 5500.** Current line 6g, Number of participants with account balances as of the end of the plan year (only defined contribution plans), would be renumbered as line 6g(2) and a new line 6g(1) would be added to the 2022 Form 5500 read as follows.

Line 6g(1). Number of participants with account balances as of the beginning of the plan year (only defined contribution plans).

- **Instructions to 2022 Form 5500.** Instructions to line 6g of 2022 Form 5500 would be modified to read as follows:

Line 6g. Enter in line 6g(1) the number of participants included on line 5 (total participants at the beginning of the plan year) who have account balances at the beginning of the plan year. Enter in line 6g(2) the number of participants included on line 6f (total participants at the end of the plan year) who have account balances at the end of the plan year. For example, for a Code section

401(k) plan the number entered on line 6g(2) should be the number of participants counted on line 6f who have made a contribution, or for whom a contribution has been made to the plan for this plan year or any prior plan year. Welfare benefit plans and defined benefit plans should leave lines 6g(1) and 6(g)(2) blank.

- **2022 Form 5500-SF.** Current line 5c, Number of participants with account balances as of the end of the plan year (only defined contribution plans), would be renumbered as line 5c(2) and a new line 5c(1) would be added to 2022 Form 5500-SF read as follows.

- **Line 5c(1).** Number of participants with account balances as of the beginning of the plan year (only defined contribution plans).

- **Instructions to 2022 Form 5500-SF.** Instructions to line 5c of 2022 Form 5500-SF would be added to read as follows:

Line 5c. Enter in line 5c(1) the number of participants included on line 5a (total participants at the beginning of the plan year) who have account balances at the beginning of the plan year. Enter in line 5c(2) the number of participants included on line 5b (total participants at the end of the plan year) who have account balances at the end of the plan year. For example, for a Code section 401(k) plan the number entered on line 5c(2) should be the number of participants counted on line 6f who have made a contribution, or for whom a contribution has been made to the plan for this plan year or any prior plan year. Welfare benefit plans and defined benefit plans should leave lines 5c(1) and 6(g)(2) blank.

9. Proposed changes to Form 5500-EZ to add new checkbox F to Part I for filer not required to e-file Form 5500-EZ

- **2022 Form 5500-EZ.** The following new checkbox F would be added to Part I of the 2022 Form 5500-EZ.

F If you are not required to file Form 5500-EZ electronically pursuant to Treas. Regs. 301.6058-2, check this box (see instructions) ..... ► ☐

- **Instructions to 2022 Form 5500-EZ.** Instructions to the new checkbox F added to Part I of the 2022 Form 5500-EZ would be added to read as follows:

Instructions for Electronic Filing Certification

Check box F only if you are filing using paper Form 5500-EZ and you are not required to electronically file Form 5500-EX pursuant to Treas. Regs. 301.6058-2, which requires a return required to be filed under Code section 6058, such as Form 5500-EZ, to be filed electronically if the filer is required by the Code or regulations to file at least 10 returns during the calendar year that includes the first day of the plan year.

Statutory Authority

Accordingly, pursuant to the authority in sections 101, 103, 104, 109, 110 and 4065 of ERISA and sections 6058 and 6059 of the Code, the Form 5500 Annual Return/Report and the instructions thereto are proposed to be amended as set forth herein.

Signed at Washington, DC,

Ali Khawar,

Acting Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

Eric Slack,

Director, Employee Plans, Tax Exempt and Government Entities Division, Internal Revenue Service.

Gordon Hartogensis,

Director, Pension Benefit Guaranty Corporation.

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