FEDERAL REGISTER

Vol. 86 Thursday

No. 177 September 16, 2021

Pages 51577–51780

OFFICE OF THE FEDERAL REGISTER

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

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Presidential Documents

Title 3—

The President

Proclamation 10256 of September 13, 2021

National Hispanic-Serving Institutions Week, 2021

By the President of the United States of America

A Proclamation

Today, more than a quarter of American schoolchildren are Hispanic—and the proportion of Hispanic Americans in our workforce is projected to grow substantially over the next 10 years. The educational success of Hispanic Americans is vital to the future of our entire country; how we as a Nation nurture that success will define our strength and stability, our shared prosperity, and our competitiveness on the world stage for generations to come.

For decades, Hispanic-Serving Institutions (HSIs) have played a key role in preparing Hispanic American scholars, artists, researchers, scientists, educators, and other leaders who make our communities and our Nation stronger, more resilient, and more equitable. HSIs advance the foundational American ideals of equity and justice by preparing graduates to contribute their God-given talents and help solve some of the greatest challenges facing our Nation and our world.

To do this, HSIs are on the cutting edge, equipping students with the knowledge and skills they need to compete in the 21st century economy and carve out their place in the middle class. In industry after industry, HSIs empower the next generation of Hispanic American leaders—while also celebrating and nourishing the diverse linguistic and cultural backgrounds that make up the broader Hispanic community.

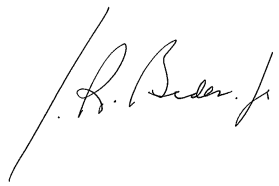
This work is essential to both the character and the economy of our Nation. Over the last 18 months, Hispanic Americans in every community have helped carry us through the COVID–19 pandemic and spark an historic economic recovery—as doctors and nurses, teachers and first responders, essential workers who keep our country going, and in countless other roles. Hispanic Americans are core to our national fabric, and HSIs are a critical resource in empowering and enriching Hispanic students and our Nation.

Beyond academic and professional preparation, HSIs also positively impact their communities. I am especially grateful for the leadership of HSIs in safeguarding the rights and dignity of Dreamers and first-generation college students across our Nation. It is my fervent hope that the Congress will provide security to all Dreamers. These young people represent America's strength—and our greatest aspirations. We cannot let them down.

Since I took office, my Administration has worked to support the health, education, equity, and economic well-being of Hispanic Americans. In my first week as President, I signed an Executive Order establishing a whole-of-government approach to advancing equity and racial justice. Additionally, my Administration moved swiftly to provide COVID relief to HSIs, families, and small businesses through the American Rescue Plan—a law which on its own is projected to cut Hispanic poverty in America this year by 43 percent. We have also reestablished the White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics. We still have a lot of work ahead of us, but I am proud of the historic investments that my Administration has made to lift up Hispanic Americans—and we will continue to fight for the rights, dignity, and success of Hispanic Americans 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 through September 18, 2021, as National Hispanic-Serving Institutions Week. I call on public officials, educators, and all the people of the United States to observe this week with appropriate programs, ceremonies, and activities that acknowledge the many ways these institutions and their graduates contribute to our country.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth 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. 2021–20163
Filed 9–15–21; 8:45 am]
Billing code 3295–F1–P

Presidential Documents

Executive Order 14044 of September 13, 2021

Amending Executive Order 14007

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to expand the President's Council of Advisors on Science and Technology, it is hereby ordered as follows:

Section 1. *Amendment to Executive Order 14007.* The first sentence of section 2(b) of Executive Order 14007 of January 27, 2021 (President's Council of Advisors on Science and Technology), is hereby amended to read as follows: ''(b) The PCAST shall be composed of not more than 32 members.''.

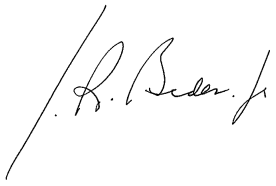
Sec. 2. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
September 13, 2021.

[FR Doc. 2021–20164
Filed 9–15–21; 8:45 am]
Billing code 3295–F1–P

Presidential Documents

Executive Order 14045 of September 13, 2021

White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* Nearly 14 million students in our Nation's public elementary and secondary school system and nearly 4 million students in postsecondary education are Hispanic. Hispanic students constitute more than 27 percent of all pre-kindergarten through 12th grade students and nearly 20 percent of college students. The Nation's future prosperity and global leadership across industries is therefore tied to the success of Hispanic and Latino students, and their success is a priority of my Administration.

From advancements in science and civil and labor rights to leadership in government, advocacy, entrepreneurship, and business, the Hispanic community has had a profound and positive impact on our schools, our communities, our economy, and our Nation. Hispanic and Latino communities encompass many racial and cultural identities that span the globe. The diversity of Hispanic and Latino students makes our classrooms across the country rich learning environments. It is important to ensure that from early childhood to higher education, Hispanic and Latino students, including Dreamers, can reach their highest potential. For many Hispanic and Latino students, Hispanic-Serving Institutions (HSIs) provide critical pathways to opportunity, and hundreds of HSIs across our Nation are advancing intergenerational mobility, success, and opportunity.

At the same time, Hispanic and Latino students face systemic inequitable barriers in accessing a high-quality education and a fair shot at the American dream. Only 40 percent of Latino children participate in preschool education programs as compared to 53 percent of their White peers. Due to systemic and historical inequities faced in the classroom, the high school graduation rate for Hispanic students is below the national average. Hispanic students are underrepresented in advanced courses in mathematics and science, and they can face language barriers in the classroom. Only 19 percent of Latino adults have at least a bachelor's degree compared with 1 in 3 overall, and just 6 percent have completed graduate or professional degree programs, versus 13 percent nationally. Further, the lack of availability of adult continuing education courses makes it difficult for many Hispanic adults to further their education. In addition, barriers to equity in education can compound and intersect for Hispanic and Latino students who are women and girls, LGBTQ+ individuals, English language learners, and individuals with disabilities.

The COVID–19 pandemic has laid bare and exacerbated many of these inequities. Hispanic and Latino students are more likely than their White peers to experience remote learning arrangements, yet they have less access to the tools necessary to succeed, such as broadband and computer access. Hispanic women have been adversely impacted by job loss, a lack of access to child care, and the inability to provide care, in greater numbers than their White counterparts. These and pre-existing disparities have led to declines in student achievement for Hispanic students. Latino students—once the fastest-growing group of undergraduates in the United States—have seen a decline in undergraduate college attendance amidst the COVID–19 pandemic. It is a priority of my Administration to ensure an equitable

recovery from COVID–19, and to provide Hispanic and Latino students with a successful return to the classroom.

These barriers exist not simply in the classroom, but also in the workplace. Hispanic workers are overrepresented in industries that have been hit hardest by the COVID–19 pandemic, and they have faced disproportionate losses in employment. Hispanic and Latino workers often face discrimination in hiring, pay, and consideration for promotions among other challenges. They need greater access to work-based learning opportunities such as mentorships, internships, and registered apprenticeships that not only guide employment seekers to a career, but provide the experience needed to secure well-paying jobs.

To ensure that our Nation reaches the ambitious goals we have set for our economy to thrive, as well as to ensure equal access to opportunity for all, we must enable Hispanic and Latino students to reach their highest potential through our Nation's schools and institutions of higher education. The Federal Government must also collaborate with Hispanic and Latino communities to ensure their long-term success.

It is the policy of my Administration to advance educational equity, excellence, and economic opportunity for Hispanic communities from early childhood until their chosen career.

Sec. 2. *White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics.*

(a) To advance equity in our Nation's schools and to promote the economic opportunity that follows it, there is established in the Department of Education (Department), the White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics (Initiative), of which the Secretary of Education (Secretary) shall serve as Chair. The Secretary shall designate an Executive Director for the Initiative (Executive Director).

(b) The Initiative shall advance educational equity and economic opportunity for Latino and Hispanic students, families, and communities by focusing on the following policy goals:

(i) increasing general understanding of systemic causes of educational challenges faced by many Hispanic and Latino students, whether these students are in urban, suburban, rural, or migrant learning environments, and working across Federal agencies to address these challenges;

(ii) increasing Hispanic and Latino children's and families' access to and participation in high-quality early childhood programs and services that promote children's healthy development and learning, prepare them for success in school, and affirm their cultural and linguistic identity;

(iii) addressing the inequitable treatment of Hispanic and Latino children, such as eradicating disparities in disciplinary actions;

(iv) supporting and improving data collection related to Hispanic and Latino students and the implementation of evidence-based strategies to increase the participation and success of Hispanic and Latino students in all levels of education and prepare them for careers and civic engagement;

(v) ensuring that all Hispanic and Latino students have access to excellent teachers, school leaders, and other professionals, including by supporting efforts to improve the recruitment, preparation, development, and retention of qualified, diverse teachers and school leaders and other professionals who understand students' lived experiences and can effectively meet their learning, social, and emotional needs;

(vi) enhancing student support services and fostering positive engagement among schools, families, community leaders, and community-based organizations to increase the high school graduation and post-secondary attendance rates and decrease the high school dropout rate for Hispanic and Latino students;

(vii) promoting a positive school climate that supports equitable access to and participation in college-readiness, advanced placement courses, and internship opportunities, as well as innovative dropout prevention and recovery strategies that better engage Hispanic and Latino youth in their learning, help them progress academically as needed, and provide those who have left the educational system with pathways to reentry;

(viii) eliminating discriminatory enrollment, housing, transportation, and other policies that lead to racial and socioeconomic segregation among and within schools;

(ix) ensuring equitable access to educational resources, professionals, and technology, including by addressing racial disparities in school funding and expenditures;

(x) breaking down barriers that impede the access of higher education institutions that serve Hispanic and Latino students, such as HSIs, to Federal funding, and strengthening the capacity of those institutions to participate in Federal programs and partnerships;

(xi) advancing racial equity and economic opportunity by connecting education to labor market needs through programs such as dual enrollment, career and technical education, registered apprenticeships, work-based learning, and career advancement, particularly in the fields of science, technology, engineering, and mathematics; and

(xii) ensuring that Hispanic and Latino communities have access to resources for economic success, such as in the areas of financial education, small business development, entrepreneurship, arts, science, technology, engineering, and mathematics.

(c) In working to fulfill its mission and objectives, the Initiative shall, consistent with applicable law:

(i) identify and promote evidence-based best practices that can provide Hispanic and Latino students with a rigorous and well-rounded education in safe and healthy environments, as well as access to support services, that will improve their educational, professional, economic, and civic opportunities;

(ii) advance and coordinate efforts to ensure equitable opportunities for Hispanic and Latino students in the re-opening process for schools across the country, and take steps to ensure that Hispanic and Latino students, from early childhood to post-secondary education, can equitably recover from learning losses and other challenges faced during the COVID–19 pandemic;

(iii) encourage and develop partnerships with a national network of early childhood and early intervention providers, schools, institutions of higher education, and other public, private, philanthropic, and nonprofit stakeholders to improve access to educational equity and economic opportunities for Hispanics and Latinos;

(iv) monitor and support the development, implementation, and coordination of Federal Government educational, workforce, research, and business development policies, programs, and technical assistance designed to improve outcomes for historically underserved communities, including Hispanics and Latinos;

(v) work closely with the Executive Office of the President on key Administration priorities related to education, equity, and economic opportunity for Hispanics and Latinos; and

(vi) advise the Secretary on issues of importance and policies relating to educational equity, excellence, and economic opportunity for Hispanics and Latinos.

(d) The Initiative shall establish a Federal Interagency Working Group, which shall be convened by the Executive Director and shall support the efforts of the Initiative. The Interagency Working Group shall collaborate

regarding resources and opportunities available across the Federal Government to increase educational and economic opportunities for Hispanics and Latinos.

(i) The Interagency Working Group shall consist of senior officials (designated by the heads of their respective departments, agencies, and offices) from the following:

(A) the Department of State;

(B) the Department of the Treasury;

(C) the Department of Defense;

(D) the Department of Justice;

(E) the Department of the Interior;

(F) the Department of Agriculture;

(G) the Department of Commerce;

(H) the Department of Labor;

(I) the Department of Health and Human Services;

(J) the Department of Housing and Urban Development;

(K) the Department of Transportation;

(L) the Department of Energy;

(M) the Department of Education;

(N) the Department of Veterans Affairs;

(O) the Department of Homeland Security;

(P) the White House Office of Management and Budget;

(Q) the White House Office of Science and Technology Policy;

(R) the Small Business Administration;

(S) the White House Domestic Policy Council;

(T) the White House Gender Policy Council;

(U) the White House Office of Public Engagement;

(V) the National Science Foundation;

(W) the National Aeronautics and Space Administration;

(X) the United States Agency for International Development; and

(Y) such additional executive departments, agencies, and offices as the Secretary may designate.

(ii) The Executive Director may establish subgroups of the Interagency Working Group to focus on different aspects of the educational system (such as HSIs, early childhood education, kindergarten through 12th grade education, children and adults with disabilities, teacher diversity, higher education, career and technical education, adult education, or correctional education and reengagement), economic opportunity (work-based learning, entrepreneurship, financial education, or mentorship) or educational challenges facing particular populations.

(e) Each executive department and agency (agency) designated to participate in the Interagency Working Group shall prepare a plan (Agency Plan) outlining measurable actions the agency will take to advance educational equity and economic opportunity for Hispanic and Latino communities, including their plans to implement the policy goals and directives outlined in section 2(b) of this order and other relevant work. These plans shall be submitted to the Chair on a date established by the Chair.

(i) As appropriate, each Agency Plan shall include:

(A) a description of the applicable agency's efforts to ensure that Federal programs and initiatives administered by the Department and other agencies are meeting the educational needs of Hispanics and Latinos, including

by encouraging the agency to incorporate best practices into appropriate discretionary programs where the agency sees fit and as permitted by law;

(B) a description of how the applicable agency has and will decrease barriers to participation of Hispanics and Latinos in Federal employment and student engagement opportunities;

(C) a description of how the applicable agency can address challenges facing Hispanic and Latino students and higher education institutions that serve Hispanic and Latino students, such as HSIs, brought on by or exacerbated by the COVID–19 pandemic;

(D) a description of how the agency's Office of Civil Rights, if applicable, can address discriminatory policies and practices that limit educational and economic opportunity for Hispanics and Latinos;

(E) any other information the applicable agency determines is relevant to promoting educational opportunities for Hispanics and Latinos; and

(F) any additional criteria established by the Chair or the Initiative.

(ii) Each agency shall assess and report to the Chair on their progress in implementing the Agency Plan on a regular basis as established by the Chair.

(iii) The Initiative shall monitor and evaluate each agency's progress towards the goals established in its Agency Plan and shall coordinate with the agency to ensure that its Plan includes measurable and action-oriented goals.

(f) The Department shall provide funding and administrative support for the Initiative and the Interagency Working Group, to the extent permitted by law and within existing appropriations. To the extent permitted by law, including the Economy Act (31 U.S.C. 1535), other agencies and offices represented on the Interagency Working Group may detail personnel to the Initiative, to assist the Department in meeting the objectives of this order.

(g) To advance shared priorities and policies that advance equity and economic opportunity for underserved communities, the Initiative shall collaborate and coordinate with other White House Initiatives related to equity and opportunity.

(h) On an annual basis, the Chair shall report to the President on the Initiative's progress in carrying out its mission and function under this order.

Sec. 3. *Presidential Advisory Commission.* (a) There is established in the Department a Presidential Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics (Commission).

(b) The Commission shall provide advice to the President through the Secretary on matters pertaining to educational equity and economic opportunity for the Hispanic and Latino community, including:

(i) what is needed for the development, implementation, and coordination of educational programs and initiatives at the Department and other agencies to improve educational opportunities and outcomes for Hispanics and Latinos;

(ii) how to promote career pathways for in-demand jobs for Hispanic and Latino students, including registered apprenticeships, internships, fellowships, mentorships, and work-based learning initiatives;

(iii) ways to strengthen the capacity of institutions, such as HSIs, to equitably serve Hispanic and Latino students and increase the participation of Hispanic and Latino students, Hispanic-serving school districts, and the Hispanic community in the programs of the Department and other agencies;

(iv) how to increase public awareness of and generate solutions for the educational and training challenges and equity disparities that Hispanic and Latino students face and the causes of these challenges; and

(v) approaches to establish local and national partnerships with public, private, philanthropic, and nonprofit stakeholders to advance the mission and objectives of this order, consistent with applicable law.

(c) The Commission shall periodically report to the President, through the Secretary and after consulting with the Executive Director, on progress in addressing the mission of the Commission.

(d) The Commission shall consist of not more than 21 members appointed by the President. The Commission may include individuals with relevant experience or subject matter expertise, as well as individuals who may serve as representatives from a variety of sectors, including education (early childhood education, elementary and secondary education, higher education, career and technical education, and adult education), labor organizations, research institutions, public and private philanthropic organizations, private sector, nonprofit, and community-based organizations at the national, State, Tribal, regional, or local levels. Commission members should be able to provide specific insight into the lived experiences of those served by the Initiative, including young adults, and have diversity across the diaspora and the geography of the country.

(i) The President shall designate one member of the Commission to serve as its Chair. The Chair, in consultation with the Executive Director, shall convene regular meetings of the Commission, determine the Commission meeting agenda, and support the work of the Commission, consistent with this order.

(ii) The Commission shall meet on a regular basis, and at least twice a year.

(e) The Department shall provide funding and administrative support for the Commission, to the extent permitted by law and within existing appropriations. Members of the Commission shall serve without compensation but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707). Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.), may apply to the administration of the Commission, any functions of the President under that Act, except that of reporting to the Congress, shall be performed by the Secretary, in accordance with guidelines issued by the Administrator of General Services.

(f) The Commission shall terminate 2 years from the date of this order, unless extended by the President.

Sec. 4. *Administrative Provisions.* (a) This order supersedes Executive Order 13935 of July 9, 2020 (White House Hispanic Prosperity Initiative), which is hereby revoked. To the extent that there are other Executive Orders that may conflict with or overlap with the provisions in this order, the provisions in this order supersede those other Executive Orders on these subjects.

(b) The heads of agencies shall assist and provide information to the Initiative and Commission established in this order, consistent with applicable law, as may be necessary to carry out the functions of the Initiative and Commission.

(c) Each agency shall bear its own expenses of participating in the Initiative established in this order.

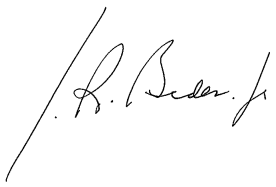
Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
September 13, 2021.

[FR Doc. 2021–20165
Filed 9–15–21; 8:45 am]
Billing code 3295–F1–P

Rules and Regulations

Federal Register
Vol. 86, No. 177
Thursday, September 16, 2021

SMALL BUSINESS ADMINISTRATION

13 CFR Part 134

[Docket Number SBA–2020–0042]

RIN 3245–AH55

Borrower Appeals of Final SBA Loan Review Decisions Under the Paycheck Protection Program

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: This final rule adopts with changes portions of the previously issued interim final rule published in the **Federal Register** on August 27, 2020, on Appeals of SBA Loan Review Decisions Under the Paycheck Protection Program. This final rule provides procedures for appeals of certain final SBA loan review decisions under the Paycheck Protection Program, which is a temporary SBA 7(a) loan program, authorized by, *inter alia,* the Coronavirus Aid, Relief, and Economic Security Act and the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act.

DATES:

Effective date: This rule is effective September 14, 2021.

Applicability date: This final rule applies to all appealable final SBA loan review decisions under the Paycheck Protection Program. The rule applies to all appeals filed after the effective date of the rule and to those appeals filed before the effective date for which a Notice and Order has not been issued.

FOR FURTHER INFORMATION CONTACT: An SBA Office of Hearings and Appeals (OHA) Representative at 202–401–8200.

SUPPLEMENTARY INFORMATION:

I. Background Information

On March 13, 2020, President Trump declared the ongoing Coronavirus Disease 2019 (COVID–19) pandemic of sufficient severity and magnitude to warrant an emergency declaration for all States, territories, and the District of Columbia. With the COVID–19 emergency, many small businesses nationwide have experienced and continue to experience economic hardship as a direct result of the Federal, State, tribal, and local public health measures that have been taken to minimize the public's exposure to the virus. These measures, some of which are government-mandated, have been implemented nationwide and include the closures of and restrictions on restaurants, bars, gyms, and other businesses. In addition, based on the advice of public health officials, other measures, such as keeping a safe distance from others or even stay-at-home orders, were being and continue to be implemented, resulting in a dramatic decrease in economic activity as the public avoids malls, retail stores, and other businesses.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) (Pub. L. 116–136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Small Business Administration (SBA) received funding and authority through the CARES Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID–19 emergency. Section 1102 of the CARES Act temporarily permitted SBA to guarantee 100 percent of 7(a) loans under a new program titled the ''Paycheck Protection Program'' (PPP) under Section 7(a)(36) of the Small Business Act. Section 1106 of the CARES Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the PPP.

On April 2, 2020, SBA posted its first PPP interim final rule (85 FR 20811) (the First Interim Final Rule). Subsequently, SBA issued a number of other interim final rules implementing the PPP. On April 24, 2020, the President signed the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116–139), which provided additional funding and authority for the PPP.

On May 22, 2020, SBA and Treasury posted an interim final rule on Loan Review Procedures and Related Borrower and Lender Responsibilities (85 FR 33010) (Loan Review interim final rule (IFR)). The rule stated that SBA would be issuing a separate interim final rule addressing the process for appealing certain SBA loan review decisions under the PPP. On June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020 (Pub. L. 116–142) (Flexibility Act) was signed into law, amending the CARES Act. On June 22, 2020, SBA and Treasury posted an interim final rule that in part revised the Loan Review IFR to incorporate the relevant Flexibility Act amendments, address revisions to the Loan Forgiveness Application (SBA Form 3508), and include a new alternative Loan Forgiveness Application (SBA Form 3508EZ) (85 FR 38304) (Second Loan Review IFR).

On July 4, 2020, Public Law 116–147 extended the authority for SBA to guarantee PPP loans to August 8, 2020. On August 11, 2020, SBA and Treasury posted an interim final rule on Appeals of SBA Loan Review Decisions Under the Paycheck Protection Program (85 FR 52883) (OHA Appeal IFR), inviting the public to submit comments on or before September 28, 2020.

On October 8, 2020, SBA and Treasury posted an interim final rule which made additional revisions to the Loan Review IFR and Second Loan Review IFR (85 FR 66214) (Third Loan Review IFR). The Third Loan Review IFR provided additional guidance concerning the forgiveness and loan review processes for PPP loans of $50,000 or less and, for PPP loans of all sizes, lender responsibilities with respect to review of borrower determinations of eligible costs for forgiveness in excess of a borrower's PPP loan amount.

On December 27, 2020, the President signed the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (Economic Aid Act) (Pub. L. 116–260), which, among other things, reauthorized lending under the PPP through March 31, 2021, authorized second draw PPP loans under Section 7(a)(37) of the Small Business Act, modified PPP provisions relating to forgiveness of PPP loans, and codified Section 1106 of the CARES Act under Section 7A of the Small Business Act. On January 19, 2021, SBA and Treasury posted an interim final rule to consolidate prior rules related to forgiveness and reviews of PPP loans

and incorporate changes made by the Economic Aid Act (86 FR 8283) (Fourth Loan Review IFR).

On March 11, 2021, the American Rescue Plan Act of 2021 (American Rescue Plan Act) was enacted to, among other things, expand eligibility for first and second draw PPP loans and revise the exclusions from payroll costs for purposes of loan forgiveness. On March 18, 2021, SBA and Treasury posted an interim final rule on PPP to incorporate the American Rescue Plan Act's amendments to the PPP, as well as other changes (86 FR 15083). On March 30, 2021, the PPP Extension Act of 2021 (Pub. L. 117–6) was enacted, extending SBA's PPP program authority through June 30, 2021. On July 30, 2021, SBA published an interim final rule on PPP establishing a direct borrower forgiveness process for loans of $150,000 or less, among other changes (86 FR 40921).

As described below, this final rule sets forth procedures for PPP borrowers and Lenders on the process for a PPP borrower to appeal certain final SBA loan review decisions under the PPP to the SBA Office of Hearings and Appeals (OHA). The interim final rule supplemented the interim final rule on Loan Review Procedures and Related Borrower and Lender Responsibilities posted on SBA's and Treasury's websites on May 22, 2020 (published on June 1, 2020, in the **Federal Register**), as revised by the interim final rules posted on SBA's and Treasury's websites on June 22, 2020, October 8, 2020, and January 19, 2021 (published on June 26, 2020, October 19, 2020, and February 5, 2021, respectively), and as further amended.

II. Notice and Comment and Immediate Effective Date

This rule revises subpart L, as added by the interim final rule posted on the websites of the SBA and the U.S. Department of the Treasury on August 11, 2020 (published in the **Federal Register** on August 27, 2020), to reflect SBA's responses to public comments on the interim final rule. The revision to § 134.102, *Jurisdiction of OHA,* is adopted without change.

This final rule adopts with changes portions of the previously-published interim final rule on Appeals of SBA Loan Review Decisions Under the Paycheck Protection Program. This rule revises 13 CFR part 134, subpart L, as added by the interim final rule, to reflect SBA's responses to public comments on the interim final rule, as detailed in Part III below. This final rule has accordingly satisfied the Administrative Procedure Act's advance notice-and-comment requirements.

SBA has found that there is good cause to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act. The intent of the CARES Act is to afford SBA the flexibility to provide relief to America's small businesses expeditiously. This intent, along with the need to provide lenders and borrowers with certainty regarding PPP loan forgiveness (if any), provides good cause for immediate implementation of changes to the OHA appeal feature of this program. Specifically, it is critical to meet lenders' and borrowers' need for clarity concerning the OHA appeal process as rapidly as possible. Borrowers have been applying for loan forgiveness, lenders have been issuing loan forgiveness decisions to SBA, and SBA has been reviewing PPP loans in connection with those forgiveness applications and decisions. SBA currently has pending final SBA loan review decisions that are ready to be issued and is continuing to conduct loan reviews and make final SBA loan review decisions that will need to be issued. Borrowers and lenders are expecting these decisions to be issued in accordance with the statutory and regulatory timelines requiring SBA to remit the appropriate forgiveness amount to the lender (if any), within 90 days of the lender issuing its decision to SBA, subject to any SBA review of the loan or the loan application. This final rule will allow SBA to immediately issue such decisions and provide certainty around the appeals process to these potential appellants without further delay. Because this final rule also provides increased accessibility to borrowers in response to comments previously received by the public, allowing the borrowers that receive an appealable final SBA loan review decision to immediately appeal under the final rule is in the best interests of the borrowers.

III. Summary of Comments Received

The comment period for the OHA Appeal IFR was open from August 27, 2020, to September 28, 2020, and SBA received 16 comments. This section includes a description of the comments and SBA's response.

Two of the comments received proposed an extension of time to file an appeal to account for appellants who may be unfamiliar with the appeals process. In the interest of efficiency and to ensure a speedy resolution of disputes concerning final SBA loan review decisions, the 30-calendar day requirement will remain. To promote clarity and fairness, SBA will no longer begin counting days to file an appeal based on when an appellant receives notification from the lender that a final SBA loan review decision has been issued without actually receiving the final loan review decision document detailing the reasons for the decision. Instead, the clock for counting days will begin only after the borrower has received the actual final SBA loan review decision document. This will provide the borrower with 30 calendar days to formulate its arguments as to why the decision is clearly erroneous. *See* 13 CFR 134.1202(a).

Two of the comments raised issue with the inability of the borrower to file arguments after the administrative record has been transmitted to OHA. Although OHA's general rules of procedure found at 13 CFR 134.206(e) allows for a party to request leave to reply to a response, this final rule explicitly directs a party to seek leave to file a reply or supplemental pleading. (13 CFR 134.1208(e).) Also, an appellant is given 30 calendar days after the issuance of the Notice and Order to file any objections to the administrative record, should the appellant find the administrative record is incomplete. *See* 13 CFR 134.1207(e).

One comment proposed that the time to file an objection to the administrative record should be extended to 15 calendar days. The commenter reasoned that a non-attorney may have difficulty understanding the role of the administrative record, what documents are included and excluded from the record, and the applicable privileges. Because the appellant will have participated in the process of providing documents submitted by the lender to SBA during the loan forgiveness process and the loan review process, the appellant should be familiar with the documents included in the administrative record, making 30 calendar days from the issuance of the Notice and Order (where the administrative record is due 20 calendar days after issuance of the Notice and Order) a sufficient time to assert an objection. The Notice and Order that will be issued under 13 CFR 134.1206 will provide a description of the documents included in the administrative record and will note the appellant's ability to object to the administrative record by the due date. The appellant can also avail itself of 13 CFR 134.1207, which provides more detail on the administrative record and appellant's ability to object to the administrative record. Appellant will also have the ability to request leave to file a supplementary pleading after

review of the SBA's appeal response, should one be filed, and administrative record under 13 CFR 134.1208(e) and 134.211 (Motions), which is incorporated into subpart L.

One comment proposed that the SBA should disclose that the appellant may object to the administrative record at the time of the transmission of the administrative record. Such notice is included in 13 CFR 134.1207 and will be provided to the appellant in the Notice and Order under 13 CFR 134.1206, which SBA deems sufficient notice of the ability to object to the administrative record.

Two comments were received regarding the need for simplicity of the appeals process as there is a large number of appellants who will be filing their appeals without the assistance of an attorney. Overall, the commenters requested a more simplified process in light of the information appellant is required to submit to OHA at the time of the appeal. One commenter suggested that *pro se* litigants should disclose their status so that OHA will assist the appellant throughout the appeals process and construe their filings liberally, taking into consideration their non-attorney status. The rules, policies, and procedures of OHA are tailored to address and accommodate all appellants, regardless of whether they are represented by an attorney. The information an appellant is required to file with an appeal is minimal, but necessary for the Judge to render a decision based on the relevant facts and law. In furtherance of OHA's commitment to ensure the appeals process is accessible to all appellants, OHA has reduced the information required to file an appeal. *See* 13 CFR 134.1204. OHA will also provide appellants with an electronic case management system (*https://appeals.sba.gov*) that will provide a simple electronic way to file, process, and track the appeal before OHA, including the automation of serving parties, and accessing appeal documents and the administrative record.

Four comments were received regarding the exhaustion of remedies requirement under 13 CFR 134.1216 that required an appellant to request review by the SBA Administrator before appealing an OHA decision to Federal district court. One comment suggested that OHA should provide language in the decision disclosing an appellant's ability to request review of OHA's decision by the SBA Administrator. The commenters also argued that this exhaustion of administrative remedies requirement was in violation of the Administrative Procedures Act and deprives appellants of due process. A number of commenters asserted that the Administrator's review of OHA's decision is a circular review process since the commenters believed that the Administrator would issue the final SBA loan review decision. The Administrator will not be issuing the final SBA loan review decision. The decision will be made by the appropriate SBA official in accordance with published delegations of authority. Additionally, various commenters asserted that OHA's ability to render an independent decision on a final SBA loan review decision is in question because OHA is a subordinate office to the Administrator. Although SBA disagrees with the assertions in those comments, SBA has determined to remove the requirement for a borrower to request a review by the SBA Administrator before any further appeal because of the limited resources within the Office of the Administrator to render a decision on the anticipated high number of requests for review. In addition, SBA believes that it is appropriate, consistent with due process requirements, and most efficient for borrowers to be able to seek relief in Federal district court, without requiring review by the Administrator. Therefore, borrowers have the option to either (1) request reconsideration by the presiding OHA judge under 13 CFR 134.1211(c) and then appeal the final decision to Federal district court under 13 CFR 134.1211(g); or (2) appeal a final decision directly to the appropriate Federal district court under 13 CFR 134.1211(g).

In lieu of the provision requiring the borrower to request review by the Administrator and in order to vest reviewable discretion with the appropriate SBA official, SBA will add a provision giving the SBA Administrator the option to review or reverse an initial OHA decision or a reconsidered initial OHA decision, in the Administrator's sole discretion. Although the Administrator has the discretion to review or reverse such decisions, borrowers may not request, and are not required to request, a review from the Administrator in order to exhaust administrative remedies before appealing to the appropriate Federal district court. *See* 13 CFR 134.1211(d).

Three comments were received regarding the standard of review and burden of proof for PPP appeals. One commenter stated that OHA should remove the requirement that the appellant establish a clear error of fact or law by SBA and only require appellant to establish error. The suggestion, however, is based on the commenter's inaccurate understanding of the administrative process, stating that OHA is reviewing a lender's decision and is not reviewing the decision of a public officer, *i.e.,* an SBA official. This is incorrect, as OHA's jurisdiction is limited to reviewing final SBA loan review decisions as provided for in 13 CFR 134.1201(b). Further, the regulation establishing OHA's jurisdiction explicitly states that it will not accept an appeal based solely on a lender's decision. *See* 13 CFR 134.1201(c). One commenter suggested a *de novo* review of the final SBA loan review decision due to the lack of guidance on the loan review process. Another commenter voiced concern with the use of the preponderance of the evidence standard in conjunction with the requirement to establish clear error on the part of SBA. The commenter found issue with the preponderance of the evidence standard because such a standard is usually required at the initial review level, and the commenter disagreed with the use of the clear error standard in light of the lack of guidance on the loan review process. The commenters also stated the appellant will be completely deprived of the opportunity to review any evidence.

SBA has determined that it will remove the burden of proof requirement of preponderance of the evidence. However, a decision by an SBA official is entitled to the deference afforded by the clear error standard. Therefore, it is appropriate and reasonable for OHA to assess the final SBA loan review decision using a clear error standard. An appellant will not be completely deprived of the opportunity to review the evidence. An appellant will be provided with a copy of the final SBA loan review decision that will set forth the reasons for the decision prior to filing an appeal, and an appellant should be familiar with the documents included in the administrative record because the appellant will have participated in the process of providing documents submitted by the lender to SBA during the loan forgiveness process and the loan review process. In addition, an appellant has the opportunity to review and object to the administrative record as provided for in 13 CFR 134.1207(e).

Three comments were received regarding the inability of appellants to request discovery, while allowing SBA to request discovery. SBA has determined that an OHA decision should be based on a review of the administrative record, the appeal petition, any response, any reply or supplemental pleading, and filings related to objection to the administrative

record. *See* 13 CFR 134.1209(c). Thus, neither discovery nor oral hearings will be permitted for appellant or SBA. *See* 13 CFR 134.1209(b).

One comment received suggested that OHA provide a description of the OHA procedural rules incorporated into subpart L in addition to citing to those rules. SBA agrees that such a change is minimal and promotes clarity and guidance. Thus, this final rule provides a description of each rule incorporated into subpart L at 13 CFR 134.1201(h).

One comment received proposed a change in the rule to account for borrowers who may have been acquired by another entity between the time the initial PPP loan was issued and the filing of a PPP appeal. The rule now includes language to address both borrowers and their legal successors under 13 CFR 134.1203.

Six commenters argued that SBA should have regulations which formalize the procedures for final SBA loan review decisions. They assert that the existing interim final rules are too broad and lacking in specifics about the process and have no criteria for making the decisions or compiling the administrative record. One commenter also requested that more information be provided on the loan forgiveness process. As to the administrative record, this final rule sets forth what should be included in the administrative record at 13 CFR 134.1207. As to the criteria for making final SBA loan review decisions and the loan forgiveness process, SBA has issued various rules and guidance on the process for SBA loan reviews including, but not limited to, the Loan Review IFR; [1] Second Loan Review IFR; [2] Third Loan Review IFR; [3] Fourth Loan Review IFR; [4] SBA Procedural Notice: Procedures for Lender Submission of Paycheck Protection Program Loan Forgiveness Decisions to SBA and SBA Forgiveness Loan Reviews; [5] and SBA Procedural Notice: PPP Borrower Resubmissions of Loan Forgiveness Applications Using Form 3508S, Lender Notice Responsibilities to PPP Borrowers, and Offset of Remittances to Lenders for Lender Debts.[6] Additional information is available at *https://www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program* and *https://home.treasury.gov/policy-issues/coronavirus/assistance-for-small-businesses/paycheck-protection-program.* SBA has issued sufficient guidance for the loan forgiveness process and the issuance of final SBA loan review decisions. SBA received a few other comments which recommended changes to the loan forgiveness application process. Such comments are not relevant to this final rule and need not be addressed here.

Five comments received stated that the requirement to repay the loans should be held in abeyance pending appeal. SBA has determined that, in order to avoid the potential administrative burden of having to reverse implementation of the final SBA loan review decision, including the refund of borrower payments by the Lender and the processing of forgiveness payments by SBA, a timely appeal by a PPP borrower of a final SBA loan review decision should extend the deferment period of the PPP loan. Payment of the PPP loan will be deferred until there is a final decision on an appeal under 13 CFR 134.1211. In addition, SBA believes that allowing for continued deferment is in the best interest of the borrower.[7] This decision has been added to the regulation at 13 CFR 134.1202(d).[8]

SBA also received some comments from borrowers that sought relief from SBA for a PPP loan application that was denied by a Lender. Such comments are not relevant to this final rule and cannot be addressed here. Further, the rule, at 13 CFR 134.1201(c), provides that a borrower cannot directly file an appeal of a decision made by a lender concerning a PPP loan to OHA.

IV. Technical Amendments

This rule makes technical amendments to ensure efficiency, transparency, and consistency throughout the appeals process. This includes: Removal of the deduction of any Economic Injury Disaster Loan (EIDL) advance (located in the OHA Appeal IFR at 13 CFR 134.1201(b)(3)) to be consistent with Section 333 of the Economic Aid Act which repealed the CARES Act provision at section 1110(e)(6) requiring SBA to deduct the EIDL advance; explicitly stating that a borrower cannot directly file an appeal of a decision by a lender concerning a PPP loan to OHA (13 CFR 134.1201(c)); informing an appellant that they must first file an appeal of the final SBA loan review decision with OHA before appealing to Federal district court (13 CFR 134.1201(d)); and incorporating provisions from OHA's General Rules of Practice into this section with descriptions of those provisions (13 CFR 134.1201(h)).

This final rule makes a procedural change to require appellants to use the OHA Case Portal to file and manage their appeals (13 CFR 134.1202(a)); this provision also establishes ''Commencement of Appeals of Final SBA Loan Review Decisions'' to outline the process of how and when an appeal must be filed (13 CFR 134.1202); and removes the requirement that timeliness of the appeal could be based on a notification by the lender of a final SBA loan review decision rather than actual receipt of the final SBA loan review decision (13 CFR 134.1202(a)).

SBA has also simplified the information required to file an appeal by eliminating a requirement to provide a basis for jurisdiction and relief sought; only requiring the borrower to produce a final SBA loan review decision (and not merely a description of a final SBA loan review decision) and the date it was received to determine timeliness of the appeal; removing requirements that the appellant provide tax documents; and removing the requirement that a borrower include a certificate of service with its appeal or any other subsequent documents filed with OHA. (13 CFR 134.1204). This rule also requires borrowers to provide their lender with a copy of their appeal in order for the lender to extend the deferment period of the PPP loan until a final decision is issued under § 134.1211. (13 CFR 134.1202(b)).

This rule also specifies that lenders and individual owners of a borrower entity do not have standing to file an appeal. (13 CFR 134.1203). The new provision, titled ''Notice and Order,'' now provides an overview of the information that will be included within the Notice and Order (13 CFR 134.1206). This rule provides for the deadline to produce the Administrative Record within the ''Administrative Record'' provision (13 CFR 134.1207(a)); clarifies that SBA may, but is not required to, respond to an appeal and, if SBA does not respond it will not be construed against SBA (13 CFR 134.1208); provides that a response to an appeal is due 45 calendar days from the date of

[1] 85 FR 33010 (June 1, 2020).

[2] 85 FR 38304 (June 26, 2020).

[3] 85 FR 66214 (October 19, 2020).

[4] 86 FR 8283 (February 5, 2021).

[5] *See https://www.sba.gov/document/procedural-notice-5000-20038-procedures-lender-submission-paycheck-protection-program-loan-forgiveness-decisions-sba-sba.*

[6] *See https://www.sba.gov/document/procedural-notice-5000-20077-ppp-borrower-resubmissions-loan-forgiveness-applications-using-form-3508s-lender-notice.*

[7] Interest will continue to accrue on the PPP loan during the deferment period. *See,* Interim Final Rule on Business Loan Program Temporary Changes; Paycheck Protection Program as Amended by Economic Aid Act (86 FR 3692, 3703, January 14, 2021).

[8] *See also,* Interim Final Rule on Business Loan Program Temporary Changes; Paycheck Protection Program—COVID Revenue Reduction Score, Direct Borrower Forgiveness Process, and Appeals Deferment (86 FR 40921, 40925, July 30, 2021).

the Notice and Order instead of from the appeal filing date (13 CFR 134.1208(b)); removes language making final decisions precedential (13 CFR 134.1211 (b) & (e)); discloses that final decisions rendered under this section may be published by OHA within its discretion with any necessary redactions (13 CFR 134.1211(f)); and removes language pertaining to protective orders, as the only parties involved in PPP appeals are the appellant and SBA, both of which will already have access to all documents that will not be accessible to the public; and adds language in 13 CFR 134.1207 to provide for a non-waiver provision.

V. Borrower Appeals of Final SBA Loan Review Decisions Under the Paycheck Protection Program

This final rule adopts with changes portions of the previously-issued interim final rule on Appeals of SBA Loan Review Decisions Under the Paycheck Protection Program. This final rule does not make any changes to 13 CFR 134.102(w) regarding OHA's jurisdiction over PPP appeals, and the current provision in the Code of Federal Regulations will remain the same. This final rule revises the authority citation for subpart L to incorporate 15 U.S.C. 636(a)(37) and 15 U.S.C. 636m, which were included in the Economic Aid Act. This final rule also revises subpart L as set forth in the prior interim final rule.

Section 134.1201, Scope of rules in this subpart, provides a process for appeal to OHA of certain final SBA loan review decisions under the PPP and any other PPP matter referred to OHA by the Administrator. PPP loans include first draw PPP loans made under Section 7(a)(36) of the Small Business Act and second draw PPP loans made under Section 7(a)(37) of the Small Business Act. Subpart L provides that an appealable final SBA loan review decision is an official written decision by SBA, after SBA completes a review of a PPP loan, that a borrower (1) was ineligible for a PPP loan; (2) was ineligible for the PPP loan amount received or used the PPP loan proceeds for unauthorized uses; (3) is ineligible for PPP loan forgiveness in the amount determined by the lender in its full approval or partial approval decision issued to SBA; and/or (4) is ineligible for PPP loan forgiveness in any amount when the lender has issued a full denial decision to SBA.

Subpart L applies to loan review decisions made by SBA after SBA completes a review of a PPP loan as set forth in Part III.1 and Part III.2c. of the Loan Review IFR, as amended by the Second Loan Review IFR, Third Loan Review IFR, and Fourth Loan Review IFR and as further amended. Subpart L further provides that any decision by a lender concerning a PPP loan, including a borrower's PPP loan application or a borrower's PPP loan forgiveness application, may not be appealed directly to OHA. In addition, this section sets forth other types of decisions and determinations that are not covered by subpart L, and makes clear that subpart C, Rules of Practice for Appeals From Size Determinations and NAICS Code Designations, is not applicable to appeals from final SBA loan review decisions. This section sets forth the specific provisions from subpart B, OHA's general Rules of Practice, that are applicable to subpart L. Other provisions from subpart B that are not specifically referenced in subpart L do not apply to subpart L. As stated above, a timely appeal by a PPP borrower of a final SBA loan review decision will extend the deferment period of the PPP loan until a final decision is issued pursuant to § 134.1211. However, if SBA remits to the lender the PPP loan forgiveness amount set forth in the decision issued by the lender to SBA, the borrower may not file an OHA appeal, and the borrower must begin repayment of any remaining balance of its PPP loan. This section makes clear that a borrower must file an appeal with OHA on a final SBA loan review decision before appealing to the appropriate Federal district court.

Section 134.1202, Commencement of appeals of final SBA loan review decisions, provides that an appellant must file its appeal with OHA within 30 calendar days of receipt of the final SBA loan review decision and references OHA's website, where an appellant will be able to file and manage its appeal using the OHA Case Portal. By utilizing the OHA Case Portal, an appellant's appeal will automatically be served upon the Associate General Counsel for Litigation at *OLITService@sba.gov.* The section also provides specific information on how to calculate days. In addition, this section makes clear that a timely appeal by a PPP borrower of a final SBA loan review decision extends the deferment period of the PPP loan until a final decision is issued pursuant to § 134.1211. This section also requires an appellant to provide the lender with a copy of its appeal in order for the lender to extend the deferment period of the PPP loan until a final decision is issued pursuant to § 134.1211.

Section 134.1203, Standing, provides that only the borrower on a loan for which SBA has issued a final SBA loan review decision has standing to appeal the final SBA loan review decision to OHA. Individual owners of a borrower entity and lenders do not have standing to appeal a final SBA loan review decision.

Section 134.1204, The appeal petition, provides that an appeal petition must include the following information: (1) A copy of the final SBA loan review decision that is being appealed and the date it was received; (2) a full and specific statement as to why the final SBA loan review decision is alleged to be erroneous, together with all factual information and legal arguments supporting the allegations; and (3) the name, address, telephone number, email address and signature of the appellant or its attorney. This section makes clear that a Notice of Paycheck Protection Program Forgiveness Payment does not provide a borrower with a right to appeal to OHA. This section further provides that an appeal petition that does not include the above may be dismissed by the Judge and permits SBA to move for a motion for more definite statement or otherwise comply with the requirements of this section.

Section 134.1205, Dismissal, provides that the Judge must dismiss the appeal if: (1) The appeal is beyond OHA's jurisdiction as set forth under § 134.1201; (2) the appeal is untimely under § 134.1202; (3) the appellant lacks standing to appeal under § 134.1203; or (4) is premature because SBA has not yet made a final SBA loan review decision. This section also provides that the Judge may dismiss the appeal if, among other things, the appeal does not, on its face, allege specific facts that if proven to be true, warrant reversal or remand of the final SBA loan review decision.

Section 134.1206, Notice and Order, provides that upon receipt of an appeal challenging a final SBA loan review decision, OHA will assign the matter to either an Administrative Law Judge or an Administrative Judge in accordance with § 134.218. Unless the appeal will be dismissed under § 134.1205, the Judge will issue a Notice and Order establishing a deadline for production of the administrative record and specifying the deadline by which SBA may respond to the appeal.

Section 134.1207, The administrative record, provides that the administrative record is due 20 calendar days after issuance of the Notice and Order. The administrative record shall include non-privileged, relevant documents that SBA considered in making its decision or that were before SBA at the time of the decision. The administrative record need not, however, contain all

documents pertaining to the appellant. SBA will file the administrative record with OHA and serve it on appellant utilizing the OHA Case Portal. This provision states that in the event that privileged or confidential information is disclosed in the administrative record, such disclosure shall not operate as a waiver of any claim of privilege or confidentiality by SBA. This section permits the appellant to object to the absence of any document from the administrative record that the appellant believes should have been included in the administrative record. Generally, such objections must be filed with OHA and served on SBA no later than 30 calendar days after issuance of the Notice and Order utilizing the OHA Case Portal. The Judge will rule upon such objections and may direct or permit that the administrative record be supplemented.

Section 134.1208, Response to an appeal petition, prescribes that only SBA, though not required, may respond to an appeal. In addition, OHA can request SBA to respond for good cause shown by OHA. The response should set forth the relevant facts and legal arguments to the issues presented on appeal. If SBA elects not to respond to the appeal, such election shall not be interpreted to be an admission or waiver of any allegation of law or fact. Except for good cause shown, a response filed after the close of record established by the Judge will not be considered. If SBA elects to respond, SBA must file its response with OHA and serve a copy of the response upon the appellant utilizing the OHA Case Portal. No reply to a response will be permitted unless the Judge directs otherwise.

Section 134.1209, Evidence beyond the record, discovery and oral hearings, provides that, generally, the Judge may not admit evidence beyond the written administrative record. Neither discovery nor oral hearings will be permitted in appeals from final SBA loan review decisions. All appeals under subpart L will be decided solely on a review of the written administrative record, the appeal petition, any response, any reply, and filings related to objection to the administrative record.

Section 134.1210, Standard of review, provides that the standard of review is whether the final SBA loan review decision was based on clear error of fact or law. The appellant has the burden of proof.

Section 134.1211, Decision on appeal, provides that the Judge will issue his or her decision within 45 calendar days after the close of record, as practicable. The decision will contain findings of fact and conclusions of law, the reasons for such findings and conclusions, and any relief ordered. The decision will be served upon appellant and SBA utilizing the OHA Case Portal. The Judge's decision on the appeal is an initial decision. However, unless a request for reconsideration is filed pursuant to paragraph (c) of § 134.1211 or the Administrator, solely within the Administrator's discretion, decides to review or reverse the initial decision pursuant to paragraph (d) of § 134.1211, an initial decision shall become the final decision of SBA 30 calendar days after its service and is thereafter appealable to the appropriate Federal district court. This section allows for a request for reconsideration pursuant to paragraph (c) of § 134.1211 by SBA or appellant. This section also provides the Administrator, solely within the Administrator's discretion, with the right to review or reverse an initial OHA decision or a reconsidered initial OHA decision pursuant to paragraph (d) of § 134.1211. Such discretionary authority of the Administrator does not create additional rights of appeal on the part of an appellant not otherwise specified in SBA regulations. This section also provides that decisions rendered by OHA under subpart L are not precedential. This section provides that final decisions rendered under this section may be published by OHA within its discretion with any necessary redactions of confidential business and financial information or personally identifiable information. Lastly, this section provides that final decisions may be appealed to the appropriate Federal district court only.

Section 134.1212, Effects of the decision, provides that OHA may affirm, reverse, or remand a final SBA loan review decision. If remanded, OHA no longer has jurisdiction over the matter unless a new appeal is filed as a result of a new final SBA loan review decision.

Section 134.1213, Equal Access to Justice Act (EAJA), provides that a prevailing appellant is not entitled to recover attorney's fees. Appeals to OHA from final SBA loan review decisions under the PPP are not proceedings that are required to be conducted by an Administrative Law Judge under § 134.603.

Section 134.1214, Confidential information, provides that if a filing or other submission made pursuant to an appeal in subpart L contains confidential business and financial information; personally identifiable information; source selection sensitive information; income tax returns; documents and information covered under § 120.1060; or any other exempt information, that information is not available to the public pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552.

Compliance With Executive Orders 12866, 12988, 13132, and 13563, the Congressional Review Act, Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Orders 12866 and 13563

OMB's Office of Information and Regulatory Affairs (OIRA) has determined that this final rule is economically significant for the purposes of Executive Orders 12866 and 13563 SBA, however, is proceeding under the emergency provision at Executive Order 12866 Section 6(a)(3)(D) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID–19 emergency.

Executive Order 12988

SBA has drafted this rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. The rule has no preemptive or retroactive effect.

Executive Order 13132

SBA has determined that 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 layers of government. Therefore, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Chapter 35

SBA has determined that this final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Congressional Review Act

OIRA has also determined that this rule is a major rule under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act or CRA), 5 U.S.C. 804(2). If a rule is deemed major, the CRA generally provides that the rule may not take effect until at least 60 days following its publication unless the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 808. For the reasons discussed in Section II above, SBA finds

that there is good cause to dispense with the CRA effective date requirement. The agency believes that delaying the effective date of this final rule would be contrary to the public interest.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. SBA Office of Advocacy guide: How to Comply with the Regulatory Flexibility Act, Ch. 1. p. 9. Since this rule finalizes an interim final rule that was exempt from notice and comment and did not require an initial regulatory flexibility analysis, SBA is likewise not required to conduct a regulatory flexibility analysis.

List of Subjects in 13 CFR Part 134

Administrative practice and procedure, Claims, Equal access to justice, Lawyers, Organization and function (Government agencies).

For the reasons stated in the preamble, the Small Business Administration interim rule amending 13 CFR part 134, which was published at 85 FR 52883 on August 27, 2020, is adopted as final with the following changes:

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

■ 1. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 634(i), 637(a), 648(l), 656(i), 657t and 687(c); 38 U.S.C. 8127(f); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

Subpart J issued under 38 U.S.C. 8127(f)(8)(B).

Subpart K issued under 38 U.S.C. 8127(f)(8)(A).

Subpart L issued under 15 U.S.C. 636(a)(36); 15 U.S.C. 636(a)(37); 15 U.S.C. 636m.

■ 2. Subpart L is revised to read as follows:

Subpart L—Borrower Appeals of Final SBA Loan Review Decisions

Sec.

§ 134.1201 Scope of the rules in this subpart.

(a) The rules of practice in this subpart apply to appeals to OHA from certain final SBA loan review decisions under the Paycheck Protection Program (PPP) as described in paragraph (b) of this section, and to any other PPP matter referred to OHA by the Administrator of SBA. The PPP was established as a temporary program under section 1102 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136), as amended. PPP loans include first draw PPP loans made under Section 7(a)(36) of the Small Business Act and second draw PPP loans made under Section 7(a)(37) of the Small Business Act.

(b) A final SBA loan review decision that is appealable under this subpart is an official written decision by SBA, after SBA completes a review of a PPP loan, that finds a borrower:

(1) Was ineligible for a PPP loan;

(2) Was ineligible for the PPP loan amount received or used the PPP loan proceeds for unauthorized uses;

(3) Is ineligible for PPP loan forgiveness in the amount determined by the lender in its full approval or partial approval decision issued to SBA; and/or

(4) Is ineligible for PPP loan forgiveness in any amount when the lender has issued a full denial decision to SBA.

(c) A borrower cannot directly file an appeal of a decision made by a lender concerning a PPP loan with OHA.

(d) An appeal to OHA is an administrative remedy that must be exhausted before judicial review of a final SBA loan review decision may be sought in a Federal district court.

(e) Any determination by SBA's Office of Inspector General concerning a PPP loan is not appealable to OHA.

(f) This subpart does not create any right to appeal any SBA decision on any 7(a) loans (*see* part 120 of this chapter) other than PPP loans.

(g) The Rules of Practice for Appeals From Size Determinations and NAICS Code Designations in subpart C of this part do not apply to appeals of final SBA loan review decisions or to the PPP.

(h) In addition to the provisions in subpart B of this part specifically referenced in this subpart, the following regulations from subpart B of this part also apply to this subpart: §§ 134.207 (Amendments and supplemental pleadings); 134.208 (Representation in cases before OHA); 134.209 (Requirement of signature); 134.211 (Motions); 134.212 (Summary judgment); 134.217 (Settlement); 134.218 (Judges); 134.219 (Sanctions); and 134.220 (Prohibition on ex parte communications). Other provisions from subpart B of this part that are not specifically referenced in this subpart do not apply to this subpart.

§ 134.1202 Commencement of appeals of final SBA loan review decisions.

(a) An appeal petition must be filed with OHA within 30 calendar days after the appellant's receipt of the final SBA loan review decision. To file and manage an appeal of a final SBA loan review decision with OHA, refer to the OHA Case Portal at *https://appeals.sba.gov.* An appellant is required to use the OHA Case Portal to file and manage their appeal.

(b) Appellant must provide their lender with a copy of the timely appeal petition upon filing in order for the lender to extend the deferment period of the PPP loan until a final decision is issued under § 134.1211.

(c)(1) Do not count the day the time period begins, but do count the last day of the time period.

(2) If the last day is Saturday, Sunday, or a Federal holiday, the time period ends on the next business day.

Example: On a Thursday, a borrower receives a final SBA loan review decision. The time period begins on Thursday, so the first day to count is Friday. Because the 30th calendar day after receipt of the decision is a Saturday, the appeal deadline extends to the next business day, which is Monday.

(3)(i) A Judge may modify any time period or deadline, except:

(A) The time period governing commencement of a case (*i.e.,* when the appeal petition may be filed); and

(B) A time period established by statute.

(ii) A party may move for an extension of time pursuant to § 134.211.

(d) A timely appeal by a PPP borrower of a final SBA loan review decision

extends the deferment period of the PPP loan until a final decision is issued under § 134.1211.

§ 134.1203 Standing.

Only the borrower on a loan, or its legal successor in interest, for which SBA has issued a final SBA loan review decision that makes a finding in § 134.1201(b)(1) through (4) has standing to appeal the final SBA loan review decision to OHA. Lenders and individual owners of a borrower entity do not have standing to appeal a final SBA loan review decision.

§ 134.1204 The appeal petition.

(a) *Content.* The appeal petition must include the following information:

(1) A copy of the final SBA loan review decision that is being appealed and the date it was received by the borrower. A Notice of Paycheck Protection Program Forgiveness Payment does not provide a borrower with a right to appeal to OHA.

(2) A full and specific statement as to why the final SBA loan review decision is alleged to be erroneous, together with all factual information and legal arguments supporting the allegations. There is no required format for an appeal petition. However, the appeal petition must meet the following requirements:

(i) The maximum length of an appeal petition (not including attachments) is 20 pages. A table of authorities is required only for petitions citing more than twenty cases, regulations, or statutes.

(ii) Clearly label any exhibits and attachments.

(3) The name, address, telephone number, email address, and signature of the appellant or its attorney.

(b) *Dismissal.* An appeal petition that does not contain all of the information required by paragraph (a) of this section may be dismissed, with or without prejudice, at the Judge's own initiative, or upon motion of SBA.

(c) *Motion for more definite statement.* (1) SBA may, no later than five calendar days after receiving a Notice and Order on an appeal petition, move for an order to the appellant to provide a more definite appeal petition or otherwise comply with this section. A Judge may order a more definite appeal petition on his or her own initiative.

(2) A motion for a more definite appeal petition stays SBA's time for filing a response. The Judge will establish the time for filing and serving a response and will extend the close of the record as appropriate.

(3) If the appellant does not comply with the Judge's order to provide a more definite appeal petition or otherwise fails to comply with applicable regulations in this subpart, the Judge may dismiss the petition with prejudice.

§ 134.1205 Dismissal.

(a) The Judge must dismiss the appeal if:

(1) The appeal is beyond OHA's jurisdiction as set forth under § 134.1201;

(2) The appeal is untimely under § 134.1202;

(3) The appellant lacks standing to appeal under § 134.1203; or

(4) The appeal is premature because SBA has not yet made a final SBA loan review decision.

(b) The Judge may dismiss the appeal in accordance with § 134.1204(b) or (c)(3), or if the appeal does not, on its face, allege specific facts that if proven to be true, warrant reversal or remand of the final SBA loan review decision.

§ 134.1206 Notice and Order.

Upon receipt of an appeal challenging a final SBA loan review decision, OHA will assign the matter to either an Administrative Law Judge or an Administrative Judge in accordance with § 134.218. Unless the appeal is dismissed under § 134.1205, the Judge will issue a Notice and Order, utilizing the OHA Case Portal, establishing a deadline for production of the administrative record and specifying a date by which SBA may respond to the appeal.

§ 134.1207 The administrative record.

(a) *Time limits.* The administrative record will be due 20 calendar days after issuance of the Notice and Order unless additional time is requested and granted.

(b) *Contents.* The administrative record shall include non-privileged, relevant documents that SBA considered in making its final loan review decision or that were before SBA at the time of the final loan review decision. The administrative record need not, however, contain all documents pertaining to the appellant.

(c) *Non-waiver.* In the event that privileged or confidential information is disclosed in the administrative record, such disclosure shall not operate as a waiver of any claim of privilege or confidentiality by SBA.

(d) *Filing.* SBA will file the administrative record with OHA and serve it on appellant utilizing the OHA Case Portal.

(e) *Objections.* (1) Any objection to the administrative record must be filed with OHA and served on SBA no later than 30 calendar days after the issuance of the Notice and Order, utilizing the OHA Case Portal. If additional time to file the administrative record was requested and granted by a Judge, appellant will have 10 calendar days from the date SBA is required to file the administrative record under the judge's order granting an extension in which to file an objection to the administrative record.

(2) The appellant may object to the absence of any document from the administrative record that the appellant believes should have been included in the administrative record.

(3) The Judge will rule upon such objections and may direct or permit that the administrative record be supplemented.

§ 134.1208 Response to an appeal petition.

(a) *Who may respond.* SBA may respond to an appeal as determined in its discretion, but SBA is not required to respond. If SBA elects not to respond, such election shall not be interpreted as an admission or waiver of any allegation of law or fact. In addition, after review of the appeal petition, OHA may request SBA to respond for good cause shown by OHA. Only SBA may respond. If filed, the response should set forth the relevant facts and legal arguments to the issues presented on appeal.

(b) *Time limit.* If an SBA response is filed, it must be filed within 45 calendar days after issuance of the Notice and Order.

(c) *Close of record.* The record will close 45 calendar days from the issuance of the Notice and Order, unless the Judge decides otherwise. Generally, filings after the close of record will not be considered.

(d) *Service.* If a response is filed, the SBA must file its response with OHA, and serve a copy of the response upon the appellant or its attorney, as applicable by utilizing the OHA Case Portal.

(e) *Reply to response.* Generally, a reply to a response is not permitted unless the Judge directs otherwise. *See* § 134.206(e). However, upon motion (*see* § 134.211), and under terms needed to avoid prejudice to any non-moving party, the Judge may permit the filing and service of a supplemental pleading after review of SBA's response and/or the administrative record. The proposed supplemental pleading must be filed and served with the motion utilizing the OHA Case Portal.

§ 134.1209 Evidence beyond the record, discovery, and oral hearings.

(a) Generally, the Judge may not admit evidence beyond the administrative record.

(b) Neither discovery nor oral hearings will be permitted in appeals from final SBA loan review decisions.

(c) All appeals under this subpart will be decided solely on a review of the administrative record, the appeal petition, any response, any reply or supplemental pleading, and filings related to objection to the administrative record.

§ 134.1210 Standard of review.

The standard of review is whether the final SBA loan review decision was based on clear error of fact or law. The appellant has the burden of proof.

§ 134.1211 Decision on appeal.

(a) *Time limits and contents.* The Judge will issue his or her decision within 45 calendar days after the close of record, as practicable. The decision will contain findings of fact and conclusions of law, the reasons for such findings and conclusions, and any relief ordered. The decision will be served upon appellant and SBA utilizing the OHA Case Portal.

(b) *Initial decision.* The Judge's decision on the appeal is an initial decision. However, unless a request for reconsideration is filed pursuant to paragraph (c) of this section or the SBA Administrator, solely within the Administrator's discretion, decides to review or reverse the initial decision pursuant to paragraph (d) of this section, an initial decision shall become the final decision of SBA 30 calendar days after its service. The discretionary authority of the Administrator does not create any additional rights of appeal on the part of an appellant not otherwise specified in SBA regulations in this chapter. Any decision pursuant to this subpart applies only to the PPP and does not apply to SBA's 7(a) Loan Program generally or to any interpretation or application of the regulations in part 120 or 121 of this chapter.

(c) *Reconsideration.* An initial decision of the Judge may be reconsidered. If a request for reconsideration is filed and the SBA Administrator does not exercise discretion to review or reverse the initial decision under paragraph (d) of this section, OHA will decide the request for reconsideration and OHA's decision on the request for reconsideration is a reconsidered initial OHA decision.

(1) Either SBA or appellant may request reconsideration by filing with the Judge and serving a petition for reconsideration within 10 calendar days after service of the Judge's decision. The request for reconsideration must clearly show an error of fact or law material to the decision. SBA does not have to have filed a response to the borrower's appeal petition to request reconsideration of the initial decision of the Judge.

(2) The Judge may also reconsider a decision on his or her own initiative within 20 calendar days after service of the Judge's decision.

(3) A reconsidered initial OHA decision becomes the final decision of SBA 30 calendar days after its service unless the SBA Administrator, solely within the Administrator's discretion, decides to review or reverse the reconsidered initial OHA decision under paragraph (d) of this section. The discretionary authority of the Administrator does not create any additional rights of appeal on the part of an appellant not otherwise specified in SBA regulations in this chapter.

(d) *Administrator review.* Within 30 calendar days after the service of an initial OHA decision or a reconsidered initial OHA decision of a Judge, the SBA Administrator, solely within the Administrator's discretion, may elect to review and/or reverse an initial OHA decision or a reconsidered initial OHA decision. In the event that the Administrator elects to review and/or reverse an initial OHA decision and a timely request for reconsideration of a Judge's initial decision is also filed by an appellant pursuant to paragraph (c) of this section, the Administrator will consider such request for reconsideration. The Administrator's decision will become the final decision of the SBA upon issuance.

(e) *Precedent.* Neither initial nor final decisions rendered by OHA under this subpart are precedential.

(f) *Publication.* Final decisions are normally published without redactions on OHA's website. PPP decisions will likely contain confidential business and financial information and/or personally identifiable information. Therefore, OHA, within its full discretion, may publish final decisions issued under this section with any necessary redactions.

(g) *Appeal to Federal district court.* Final decisions may be appealed to the appropriate Federal district court only.

§ 134.1212 Effects of the decision.

OHA may affirm, reverse, or remand a final SBA loan review decision. If remanded, OHA no longer has jurisdiction over the matter unless a new appeal is filed as a result of a new final SBA loan review decision.

§ 134.1213 Equal Access to Justice Act.

A prevailing appellant is not entitled to recover attorney's fees. Appeals to OHA from final SBA loan review decisions under the PPP are not proceedings that are required to be conducted by an Administrative Law Judge under § 134.603.

§ 134.1214 Confidential information.

If a filing or other submission made pursuant to an appeal in this subpart contains confidential business and financial information; personally identifiable information; source selection sensitive information; income tax returns; documents and information covered under § 120.1060 of this chapter; or any other exempt information, that information is not available to the public pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552.

Isabella Casillas Guzman,

Administrator.

[FR Doc. 2021–19985 Filed 9–14–21; 11:15 am]

BILLING CODE 8026–03–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0701; Project Identifier MCAI–2021–00365–T; Amendment 39–21704; AD 2021–18–03]

RIN 2120–AA64

Airworthiness Directives; Yaborã Indústria Aeronáutica S.A. (Type Certificate Previously Held by Embraer S.A.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2020–26–02, which applied to certain Yaborã Indústria Aeronáutica S.A. (type certificate previously held by Embraer S.A.) Model ERJ 190–400 airplanes. AD 2020–26–02 required amending the existing airplane flight manual (AFM) to incorporate a new limitation and revise certain normal procedures. This AD retains those requirements and also requires upgrading the electronic engine control (EEC) software, as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is incorporated by reference. This AD was prompted by a report of an in-flight shutdown (IFSD) due in part to failure in the low-pressure compressor (LPC) rotor 1 during operation in high altitude at high thrust settings, and by the development of updated EEC software, which would

terminate the requirement to amend the existing AFM. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective October 1, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 1, 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 material incorporated by reference (IBR) in this AD, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, BRAZIL, Tel: 55 (12) 3203–6600; Email: *pac@anac.gov.br;* internet *www.anac.gov.br/en/.* You may find this IBR material on the ANAC website at *https://sistemas.anac.gov.br/certificacao/DA/DAE.asp.* 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–2021–0701.

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–2021–0701; 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: Krista Greer, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3221; email *krista.greer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued AD 2020–26–02, Amendment 39–21357 (85 FR 81790, December 17, 2020) (AD 2020–26–02), which applied to Yaborã Indústria Aeronáutica S.A. (type certificate previously held by Embraer S.A.) Model ERJ 190–400 airplanes. AD 2020–26–02 required amending the existing AFM to incorporate a new limitation and revise certain normal procedures. The FAA issued AD 2020–26–02 to address uncontained release of the LPC rotor 1 and damage to the engine and airplane structure, which could result in loss of control of the airplane.

Actions Since AD 2020–26–02 Was Issued

AD 2020–26–02 and the corresponding ANAC AD 2020–07–01 considered their requirements interim action. ANAC AD 2020–07–01 indicated that further mandatory actions may be necessary as a result of the investigation into failures in engines similar to those on affected airplanes. The manufacturer has since developed upgraded EEC software that will prevent the unsafe condition. The FAA has determined that further rulemaking is necessary; this AD follows from that determination.

Since the FAA issued AD 2020–26–02, ANAC, which is the aviation authority for Brazil, has issued ANAC AD 2020–07–01R01, effective March 26, 2021 (ANAC AD 2020–07–01R01) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Model ERJ 190–400 airplanes. ANAC AD 2020–07–01R01 supersedes ANAC AD 2020–07–01.

This AD was prompted by a report of an IFSD due in part to failure in the LPC rotor 1 during operation in high altitude at high thrust settings, and the development of upgraded EEC software, which eliminates the need for the amendments to the existing AFM required by AD 2020–26–02. The FAA is issuing this AD to address uncontained release of the LPC rotor 1 and damage to the engine and airplane structure, which could result in loss of control of the airplane. See the MCAI for additional background information.

Explanation of Retained Requirements

Although this AD does not explicitly restate the requirements of AD 2020–26–02, this AD retains all of the requirements of AD 2020–26–02. Those requirements are referenced in ANAC AD 2020–07–01R01, which, in turn, is referenced in paragraph (g) of this AD.

Related Service Information Under 1 CFR Part 51

ANAC AD 2020–07–01R01 describes procedures for amending the existing AFM to incorporate a new limitation and revise the normal procedures to limit the engine N1 setting for flights above 33,000 ft. ANAC AD 2020–07–01R01 also describes procedures for upgrading the EEC software and subsequently removing the AFM amendments. 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 has 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 the MCAI 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 some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, ANAC AD 2020–07–01R01 is incorporated by reference in this AD. This AD requires compliance with ANAC AD 2020–07–01R01 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Service information required by ANAC AD 2020–07–01R01 for compliance will be available at *https://www.regulations.gov* by searching for

and locating Docket No. FAA–2021–0701 after this AD is published.

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–2021–0701; Project Identifier MCAI–2021–00365–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 Krista Greer, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3221. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Interim Action

The FAA considers this AD interim action. Investigation into failures in engines similar to those installed on the affected airplanes will enable the manufacturer to obtain better insight into the nature, cause, and extent of the IFSDs, and eventually to develop final action to address the unsafe condition. Once final action has been identified, the FAA might consider further 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.

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. If an affected airplane is 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

Action	Labor cost	Parts cost	Cost per product
Retained actions from AD 2020–26–02	1 work-hour × $85 per hour = $85	$0	$85.
New required actions	Up to 3 work-hours × $85 per hour = Up to $255	0	Up to $255.

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

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:

■ a. Removing airworthiness directive (AD) 2020–26–02, Amendment 39–

21357 (85 FR 81790, December 17, 2020), and

■ b. Adding the following new AD:

2021–18–03 Yaborã Indústria Aeronáutica S.A. (Type Certificate Previously Held by Embraer S.A.) Airplanes: Amendment 39–21704; Docket No. FAA–2021–0701; Project Identifier MCAI–2021–00365–T.

(a) Effective Date

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

(b) Affected ADs

This AD replaces AD 2020–26–02, Amendment 39–21357 (85 FR 81790, December 17, 2020) (AD 2020–26–02).

(c) Applicability

This AD applies to Yaborã Indústria Aeronáutica S.A. (type certificate previously held by Embraer S.A.) Model ERJ 190–400 airplanes, certificated in any category, as identified in Agência Nacional de Aviação Civil (ANAC) AD 2020–07–01R01, effective March 26, 2021 (ANAC AD 2020–07–01R01).

(d) Subject

Air Transport Association (ATA) of America Code 72, Turbine/turboprop engine.

(e) Reason

This AD was prompted by a report of an in-flight shutdown (IFSD) due in part to failure in the low-pressure compressor (LPC) rotor 1 during operation in high altitude at high thrust settings, and by the development of updated electronic engine control (EEC) software that will prevent the unsafe condition. The FAA is issuing this AD to address uncontained release of the LPC rotor 1 and damage to the engine and airplane structure, which could result in loss of control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, ANAC AD 2020–07–01R01.

(h) Exceptions to ANAC AD 2020–07–01R01

(1) Where ANAC AD 2020–07–01R01 refers to ''the effective date of [ANAC] AD 2020–07–01,'' this AD requires using January 4, 2021 (the effective date of FAA AD 2020–26–02).

(2) Where ANAC AD 2020–07–01R01 says to ''upgrade de EEC software,'' this AD requires to ''upgrade the EEC software.''

(3) Where ANAC AD 2020–07–01R01 refers to its effective date, this AD requires using the effective date of this AD.

(4) The ''Alternative method of compliance (AMOCs)'' section of ANAC AD 2020–07–01R01 does not apply to this AD.

(5) Where paragraph (c)(2) of ANAC AD 2020–07–01R01 requires removing the airplane flight manual (AFM) amendments, this AD requires that the amendments to the existing AFM be removed before further flight after the EEC software has been updated.

(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.*

(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 ANAC; or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(j) Related Information

For more information about this AD, contact Krista Greer, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3221; email *krista.greer@faa.gov.*

(j) 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) Agência Nacional de Aviação Civil (ANAC) AD 2020–07–01R01, effective March 26, 2021.

(ii) [Reserved]

(3) For ANAC AD 2020–07–01R01, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, BRAZIL, Tel: 55 (12) 3203–6600; Email: *pac@anac.gov.br;* internet *www.anac.gov.br/en/.* You may find this IBR material on the ANAC website at *https://sistemas.anac.gov.br/certificacao/DA/DAE.asp.*

(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–2021–0701.

(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 September 9, 2021.

Ross Landes,

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

[FR Doc. 2021–19847 Filed 9–15–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0306; Project Identifier MCAI–2020–01493–E; Amendment 39–21706; AD 2021–18–05]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (Type Certificate Previously Held by Rolls-Royce plc) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2020–15–12 for certain Rolls-Royce Deutschland Ltd & Co KG (RRD) Trent 1000 model turbofan engines. AD 2020–15–12 required initial and repetitive ultrasonic or visual inspections of the intermediate-pressure compressor (IPC) stage 1 rotor blade root (front face), IPC stage 2 rotor blade root (front and rear face), and IPC shaft stage 2 dovetail post (front face), and removal of any cracked parts from service. AD 2020–15–12 also required an inspection after asymmetric power and cabin depressurization events. This AD was prompted by IPC rotor blade separations resulting in engine failures. This AD requires initial and repetitive ultrasonic or visual inspections of certain IPC stage 1 rotor blade root, IPC stage 2 rotor blade root, and IPC shaft stage 2 dovetail posts until replacement of the IPC stage 1 and stage 2 rotor blades with redesigned IPC stage 1 and stage 2 rotor blades in kitted sets. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 21, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 21, 2021.

ADDRESSES: For service information identified in this final rule, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; phone: +44 (0)1332 242424; fax: +44 (0)1332 249936; website: *https://www.rolls-royce.com/contact-us.aspx*. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0306.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0306; 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: Kevin Clark, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7088; fax: (781) 238–7199; email: *kevin.m.clark@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2020–15–12, Amendment 39–21175 (85 FR 45081, July 27, 2020), (AD 2020–15–12). AD 2020–15–12 applied to certain RRD Trent 1000–A2, Trent 1000–AE2, Trent 1000–C2, Trent 1000–CE2, Trent 1000–D2, Trent 1000–E2, Trent 1000–G2, Trent 1000–H2, Trent 1000–J2, Trent 1000–K2, and Trent 1000–L2 model turbofan engines. The NPRM published in the **Federal Register** on April 22, 2021 (86 FR 21233). The NPRM was prompted by IPC rotor blade separations resulting in engine failures. Subsequently, the manufacturer identified the need to add new inspections and an optional terminating action, amend the asymmetric power condition for engine inspection, and to add an inspection after a cabin depressurization event. In the NPRM, the FAA proposed to continue to require initial and repetitive ultrasonic or visual inspection of the IPC stage 1 rotor blade root (front face), IPC stage 2 rotor blade root (front and rear face), and IPC shaft stage 2 dovetail post (front face), removal of any cracked parts from service, and an inspection after asymmetric power and cabin depressurization events until the installation of the IPC stage 1 and stage 2 rotor blades with the IPC stage 1 and stage 2 rotor blades in kitted sets. The FAA is issuing this AD to address the unsafe condition on these products.

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2020–0240, dated November 5, 2020 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> Occurrences were reported on Rolls-Royce Trent 1000 'Pack C' engines, where some IPC Rotor 1 and Rotor 2 blades were found cracked.
>
> This condition, if not detected and corrected, could lead to in-flight blade release, possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, Rolls-Royce initially issued Alert NMSB TRENT 1000 72–AJ814 and 72–AJ819 to provide inspection instructions for IPC Rotor 1 blades, and IPC Rotor 2 blades and IPC shaft Stage 2 dovetail posts, respectively. Rolls-Royce also issued NMSB TRENT 1000 72–J871 to provide rework instructions for the affected parts, and Alert NMSB TRENT 1000 72–AJ869 to inspect those post-rework parts. Consequently, EASA issued AD 2017–0248 to require repetitive inspections of the affected IPC Rotor blades and IPC shaft Stage 2 dovetail posts and, depending on findings, removal from service of the engine for corrective action.
>
> After that [EASA] AD was issued, Rolls-Royce issued Alert NMSB TRENT 1000 72–AK058 to provide instructions for a one-time on-wing inspection. Consequently, EASA issued AD 2018–0073, retaining the requirements of EASA AD 2017–0248, which was superseded, to require an additional borescope inspection of certain engines and, depending on findings, removal from service of the engine for corrective action.
>
> After that [EASA] AD was issued, it was determined that repetitive borescope inspections are necessary on all engines to ensure fleet-wide continued safe operation. Consequently, Rolls-Royce revised Alert NMSB TRENT 1000 72–AJ869, Alert NMSB TRENT 1000 72–AJ814, Alert NMSB TRENT 1000 72–AJ819 and NMSB TRENT 1000 72–J871, and issued NMSB TRENT 1000 72–AK060 to consolidate all inspection instructions. Consequently, EASA issued AD 2018–0084 (later revised), retaining the requirements of EASA AD 2018–0073, which was superseded, and requiring repetitive on-wing borescope inspections of the affected Rotor 1 parts and affected Rotor 2 parts and, depending on findings, removal from service of the engine for corrective action. That [EASA] AD also introduced specific requirements for engines installed on aeroplanes involved in ETOPS, and inspection following operation in asymmetric power conditions.
>
> Rolls-Royce then introduced NMSB Trent 1000 72–AK092 to provide inspections for the rear face of the Rotor 2 blades and NMSB TRENT 1000 72–AK060 was revised (R1) accordingly. Later, Rolls-Royce developed mod 72–J941, installing improved IPC Stage 1 and Stage 2 rotor blades, and issued the modification SB, providing the necessary instructions for in-service application. EASA issued AD 2018–0084R2 to exclude post-mod 72–J941 engines from the Applicability and introducing the modification SB as terminating action for the repetitive inspections as required by that [EASA] AD.
>
> After that [EASA] AD was issued, Rolls-Royce issued NMSB TRENT 1000 72–AK313 and revised Alert NMSB TRENT 1000 72–AJ814, 72–AJ819 and 72–AK092 to introduce new inspections, new thresholds and new intervals, depending on engine configuration. These inspections are for all operations, ETOPS and non-ETOPS. The latest revision of the NMSB also amended the asymmetric power conditions for engine inspection and introduced cabin depressurisation as an event to trigger engine inspection(s).
>
> Consequently, EASA issued AD 2019–0250 to require introduction of the new inspections, replacing those previously imposed by EASA AD 2018–0084R2 (through NMSB TRENT 1000 72–AK060), and to remove the references to Engine Health Monitoring messages and ETOPS-related requirements.
>
> Since that [EASA] AD was issued, it was discovered that the manufacturing distribution of the individual blade frequencies could differ from the assumed values during certification of the SB TRENT 1000 72–J941, which means there may not be sufficient margin to prevent the blades from experiencing high vibration levels. Prompted by these findings, Rolls-Royce issued the modification SB to provide blade kitting instructions.

You may obtain further information by examining the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0306.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from 1 commenter. The commenter was The Boeing Company (Boeing). Boeing supported the NPRM without change.

Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting the AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Rolls-Royce Alert Non-Modification Service Bulletin (NMSB) Trent 1000 72–AK313, Revision 1, dated August 22, 2019; and Rolls-Royce Alert Service Bulletin (SB) Trent 1000 72–AK430, Initial Issue, dated August 17, 2020. Rolls-Royce Alert NMSB Trent 1000 72–AK313 defines the initial inspection threshold and repeat inspection intervals for Trent 1000 IPC stage 1 rotor blade, IPC stage 2 rotor blade, and IPC shaft stage 2 dovetail posts. Rolls-Royce Alert SB Trent 1000 72–AK430 introduces the IPC stage 1 and stage 2 rotor blades in kitted sets and provides kitting instructions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Other Related Service Information

The FAA reviewed Rolls-Royce Alert NMSB Trent 1000 72–AJ814, Revision 5, dated May 3, 2019; Rolls-Royce Alert NMSB Trent 1000 72–AJ819, Revision 4, dated May 3, 2019; Rolls-Royce Alert NMSB Trent 1000 72–AK092, Revision 4, dated May 3, 2019; Rolls-Royce SB Trent 1000 72–J871, Revision 6, dated December 12, 2019; and Rolls-Royce SB Trent 1000 72–J941, Revision 1, dated February 6, 2019.

Rolls-Royce Alert NMSB Trent 1000 72–AJ814 describes procedures for performing an ultrasonic inspection (USI) of the IPC stage 1 rotor blades. Rolls-Royce Alert NMSB Trent 1000 72–AJ819 describes procedures for performing a visual borescope inspection of the IPC stage 2 rotor blades and IPC shaft stage 2 dovetail posts. Rolls-Royce Alert NMSB Trent 1000 72–AK092 describes procedures for performing a USI of the IPC stage 2 rotor blades. Rolls-Royce SB Trent 1000 72–J871 describes procedures for reworking or replacing the affected parts. Rolls-Royce SB Trent 1000 72–J941 specifies procedures for installing the redesigned IPC stage 1 and stage 2 rotor blades.

Costs of Compliance

The FAA estimates that this AD affects 7 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect the IPC stage 1 rotor blade root (Front Face).	20 work-hours × $85 per hour = $1,700	$0	$1,700	$11,900
Inspect the IPC stage 2 rotor blade root (Front Face) and IPC shaft stage 2 dovetail post (Front Face).	6 work-hours × $85 per hour = $510	0	510	3,570
Inspect the IPC stage 2 rotor blade root (Rear Face).	10 work-hours × $85 per hour = $850	0	850	5,950
Replace all 34 IPC stage 1 rotor blades (mandatory terminating action).	280 work-hours × $85 per hour = $23,800	52,360	76,160	533,120
Replace all 49 IPC stage 2 rotor blades (mandatory terminating action).	280 work-hours × $85 per hour = $23,800	48,755	72,555	507,885

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the inspection. The agency has no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace all 34 IPC stage 1 rotor blades	280 work-hours × $85 per hour = $23,800	$52,360	$76,160
Replace all 49 IPC stage 2 rotor blades	280 work-hours × $85 per hour = $23,800	48,755	72,555
Replace the IPC drum assembly	144 work-hours × $85 per hour = $12,240	1,370,000	1,382,240

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 has 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,

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:
■ a. Removing Airworthiness Directive AD 2020–15–12, Amendment 39–21175 (85 FR 45081, July 27, 2020); and
■ b. Adding the following new airworthiness directive:

2021–18–05 Rolls-Royce Deutschland Ltd & Co KG (Type Certificate previously held by Rolls-Royce plc): Amendment 39–21706; Docket No. FAA–2021–0306; Project Identifier MCAI–2020–01493–E.

(a) Effective Date

This airworthiness directive (AD) is effective October 21, 2021.

(b) Affected ADs

This AD replaces AD 2020–15–12, Amendment 39–21175 (85 FR 45081, July 27, 2020).

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG (Type Certificate previously held by Rolls-Royce plc) Trent 1000–A2, Trent 1000–AE2, Trent 1000–C2, Trent 1000–CE2, Trent 1000–D2, Trent 1000–E2, Trent 1000–G2, Trent 1000–H2, Trent 1000–J2, Trent 1000–K2, and Trent 1000–L2 model turbofan engines, except those that have the redesigned intermediate-pressure compressor (IPC) stage 1 and stage 2 rotor blades introduced by Rolls-Royce (RR) Service Bulletin (SB) Trent 1000 72–J941, Initial Issue, dated December 6, 2016, or Revision 1, dated February 6, 2019.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by IPC rotor blade separations resulting in engine failures. The FAA is issuing this AD to prevent failure of the IPC. The unsafe condition, if not addressed, could result in failure of one or more engines, loss of thrust control, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

(1) After the effective date of this AD, before exceeding the initial inspection thresholds and repeat inspection intervals specified in Table 1 of RR Alert Non-Modification Service Bulletin (NMSB) Trent 1000 72–AK313, Revision 1, dated August 22, 2019 (RR NMSB Trent 1000 72–AK313 R1):

(i) Perform initial ultrasonic inspections (USIs) of the IPC stage 1 rotor blade root (front face).

(ii) Thereafter, perform repetitive USIs of the IPC stage 1 rotor blade root (front face).

(iii) Use the Accomplishment Instructions, paragraph 3.A.(1)(a) (on-wing) or 3.A.(2)(a) and (b) (in-shop), of RR NMSB Trent 1000 72–AK313 R1 to perform the inspections.

(2) After the effective date of this AD, before exceeding the initial inspection thresholds and repeat inspection intervals specified in Table 2 of RR NMSB Trent 1000 72–AK313 R1:

(i) Perform initial visual inspections of the IPC stage 2 rotor blade root (front face) and IPC shaft stage 2 dovetail post (front face).

(ii) Thereafter, perform repetitive visual inspections of the IPC stage 2 rotor blade root (front face) and IPC shaft stage 2 dovetail post (front face).

(iii) Use the Accomplishment Instructions, paragraph 3.B.(1)(a) (on-wing) or 3.B.(2)(b) (in-shop), of RR NMSB Trent 1000 72–AK313 R1 to perform the inspections.

(3) After the effective date of this AD, before exceeding the initial inspection threshold and repeat inspection intervals specified in Table 2 of RR NMSB Trent 1000 72–AK313 R1:

(i) Perform initial USIs of IPC stage 2 rotor blade root (rear face).

(ii) Thereafter, perform repetitive USIs of IPC stage 2 rotor blade root (rear face).

(iii) Use the Accomplishment Instructions, paragraph 3.C.(1)(a) (on-wing) or 3.C.(2)(a) (in-shop), of RR NMSB Trent 1000 72–AK313 R1 to perform the inspections.

(4) After the effective date of this AD, within 5 engine flight cycles (FCs) after each occurrence in which any engine operates in asymmetric power conditions at an altitude of less than 28,000 feet, perform the following inspections on the engine not affected by the power reduction or in-flight shutdown (IFSD):

(i) Perform initial USIs and visual inspections required by paragraphs (g)(1) through (3) of this AD.

(ii) Thereafter, perform the repetitive USIs and visual inspections required by paragraphs (g)(1) through (3) of this AD.

(iii) Use the service information and repetitive inspection thresholds required by paragraphs (g)(1)(iii), (2)(iii), and (3)(iii) to perform the inspections, as applicable.

(5) After the effective date of this AD, within 5 engine FCs following a cabin depressurization event, perform the following inspections on both engines installed on the airplane:

(i) Perform initial USIs and visual inspections required by paragraphs (g)(1) through (3) of this AD.

(ii) Thereafter, perform the repetitive USIs and visual inspections required by paragraphs (g)(1) through (3) of this AD.

(iii) Use the service information and repetitive inspection thresholds required by paragraphs (g)(1)(iii), (2)(iii), and (3)(iii) to perform the inspections, as applicable.

(6) If any IPC stage 1 rotor blade root (front face), IPC stage 2 rotor blade root (front face), or IPC stage 2 rotor blade root (rear face) is found cracked during any inspection required by this AD, replace the part with a part eligible for installation before further flight.

(7) If any IPC shaft stage 2 dovetail post (front face) is found cracked during any inspection required by this AD, replace the IPC drum assembly.

(h) Mandatory Terminating Action

At the next engine shop visit after the effective date of this AD, replace the IPC stage 1 and stage 2 rotor blades with redesigned IPC stage 1 and stage 2 rotor blades introduced by RR SB Trent 1000 72–J941, Revision 1, dated February 6, 2019. Install the blades as kitted sets using the Accomplishment Instructions, paragraph 3.C. (In-Shop), of RR Alert SB Trent 1000 72–AK430, Initial Issue, dated August 17, 2020. This replacement of the IPC stage 1 and stage 2 rotor blades as kitted sets is a terminating action for the initial and repetitive ultrasonic or visual inspection requirements, as applicable, required by paragraphs (g)(1) through (5) of this AD.

(i) Definitions

(1) For the purpose of this AD, an ''asymmetric power condition'' is the operation of the airplane at an altitude of less than 28,000 feet, experiencing either single engine take-off, engine fault (reduced power on one engine), or single engine IFSD, which includes execution of any non-normal checklist procedure.

(2) For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine case flanges, except that the separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance does not constitute an engine shop visit.

(j) Credit for Previous Actions

You may take credit for the initial inspections required by paragraphs (g)(1) through (5) of this AD if you performed these inspections before the effective date of this AD using any of the following.

(1) RR Alert NMSB Trent 1000 72–AJ819, Revision 3, dated April 13, 2018, or earlier revisions;

(2) RR Alert NMSB Trent 1000 72–AJ814, Revision 4, dated September 28, 2018, or earlier revisions;

(3) RR Alert NMSB Trent 1000 72–AK313, Initial Issue, dated May 2, 2019; or

(4) RR Alert NMSB Trent 1000 72–AK092, Revision 3, dated February 28, 2019, or earlier revisions.

(k) Special Flight Permit

A special flight permit may be issued in accordance with 14 CFR 21.197 and 21.199 to permit a one-time non-revenue ferry flight to a location where the engine can be removed from service for operators who are

prohibited from further flight due to a crack finding as a result of paragraph (g) of this AD. This ferry flight must be performed without passengers, involve non-ETOPS operation, and consume no more than three FCs.

(l) Alternative Methods of Compliance (AMOCs)

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

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

(m) Related Information

(1) For more information about this AD, contact Kevin Clark, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7088; fax: (781) 238–7199; email: *kevin.m.clark@faa.gov*.

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2020–0240, dated November 5, 2020, for more information. You may examine the EASA AD in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0306.

(n) 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 the AD specifies otherwise.

(i) Rolls-Royce Alert Non-Modification Service Bulletin Trent 1000 72–AK313, Revision 1, dated August 22, 2019.

(ii) Rolls-Royce Alert Service Bulletin Trent 1000 72–AK430, Initial Issue, dated August 17, 2020.

(3) For Rolls-Royce service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; phone: +44 (0)1332 242424; fax: +44 (0)1332 249936; website: *https://www.rolls-royce.com/contact-us.aspx*.

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759.

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

Issued on August 23, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–19982 Filed 9–15–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0790; Project Identifier MCAI–2021–01007–T; Amendment 39–21738; AD 2021–19–20]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Dassault Aviation Model FALCON 7X airplanes. This AD was prompted by a report of defects on the piston hole associated with the O_2 saver feature that may prevent efficient deactivation of the O_2 saver function. This AD requires amending the existing airplane flight manual (AFM) to incorporate a check and an operating limitation regarding the O_2 saver function, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also limits the installation of affected parts under certain conditions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective September 16, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publications listed in this AD as of September 16, 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 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 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 at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0790.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0790; 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, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *Tom.Rodriguez@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0790; Project Identifier MCAI–2021–01007–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 Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *Tom.Rodriguez@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD 2021–0202–E, dated September 9, 2021 (EASA Emergency AD 2021–0202–E) (also referred to as the MCAI), to correct an unsafe condition for all Dassault Aviation Model FALCON 7X airplanes. EASA subsequently issued EASA AD 2021–0202R1, dated September 10, 2021 (EASA AD 2021–0202R1) to address an incorrect reference to a non-existing part number within the definition of the affected part.

This AD was prompted by a report of plastic molding burrs and defects found on the piston hole associated with the O_2 saver feature during production of certain SAFRAN flightcrew oxygen masks. The O_2 saver function allows the flightcrew to wear the oxygen mask with limited oxygen consumption to save oxygen by delivering it only when needed, either automatically in case of depressurization, or manually by switching the 100% or EMERG mode button. Defects on the piston hole may prevent efficient deactivation of the O_2 saver function. The FAA is issuing this AD to address this condition, which could lead to inadequate oxygen supply to the flightcrew in case of decompression of the airplane or smoke or fire in the flight deck. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0202R1 specifies procedures for amending the existing AFM to incorporate a specific check to ensure that the O_2 saver function is not activated and an operating limitation to prevent use of the O_2 saver function. EASA AD 2021–0202R1 also limits the installation of affected parts under certain conditions. 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 this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this AD after determining that the unsafe condition described previously 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 2021–0202R1 described previously, except for any differences identified as exceptions in the regulatory text of this AD.

EASA AD 2021–0202R1 requires operators to ''inform all flight crews'' of amendments to the AFM, and thereafter to ''operate the aeroplane accordingly.'' However, this AD does not specifically require those actions as they are already required by FAA regulations. FAA regulations require operators furnish to pilots any changes to the AFM (*e.g.,* 14 CFR 121.137), and to ensure that pilots are familiar with the AFM (*e.g.,* 14 CFR 91.505). As with any other training requirement, training on the updated AFM content is tracked by the operators and recorded in each pilot's training record, which is available for the FAA to review. FAA regulations also require pilots to follow the procedures in the existing AFM including all updates. 14 CFR 91.9 requires that no person may operate a civil aircraft without complying with the operating limitations specified in the AFM. Therefore, including a requirement in this AD to operate the airplane according to the amended AFM would be redundant and unnecessary.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2021–0202R1 is incorporated by reference in this AD. This AD requires compliance with EASA AD 2021–0202R1 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 2021–0202R1 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 2021–0202R1. Service information required by EASA AD 2021–0202R1 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0790 after this AD is published.

Interim Action

The FAA considers this AD interim action. If final action is later identified, the FAA might consider further rulemaking then.

FAA's Justification and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because failure to deactivate the O_2

saver function could lead to inadequate oxygen supply to the flightcrew in case of decompression of the airplane or smoke or fire in the flight deck. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

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

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

The FAA estimates that this AD affects 20 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	Up to $1,700.

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, 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.

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:

2021–19–20 Dassault Aviation: Amendment 39–21738; Docket No. FAA–2021–0790; Project Identifier MCAI–2021–01007–T.

(a) Effective Date

This airworthiness directive (AD) is effective September 16, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Dassault Aviation Model FALCON 7X airplanes, certificated in any category.

Note 1 to paragraph (c): Model FALCON 7X airplanes with Dassault modification M1000 incorporated are commonly referred to as ''Model FALCON 8X'' as a marketing designation.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Unsafe Condition

This AD was prompted by report of defects on the piston hole associated with the O_2 saver feature that may prevent efficient deactivation of the O_2 saver function. The FAA is issuing this AD to address this condition, which could lead to inadequate oxygen supply to the flightcrew in case of decompression of the airplane or smoke or fire in the flight deck.

(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 2021–0202R1, dated September 10, 2021 (EASA AD 2021–0202R1).

(h) Exceptions to EASA AD 2021–0202R1

(1) Where EASA AD 2021–0202R1 refers to its effective date, this AD requires using the effective date of this AD.

(2) Paragraph (1) of EASA AD 2021–0202R1 specifies amending ''the applicable AFM [airplane flight manual],'' but this AD requires amending the applicable existing AFM and applicable corresponding operational procedures.

(3) Whereas paragraph (1) of EASA AD 2021–0202R1 requires operators to ''inform all flight crews'' of the AFM amendments, and thereafter to ''operate the aeroplane accordingly,'' this AD does not specifically require those actions as they are already required by FAA regulations.

(4) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0202R1.

(i) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the actions can be performed, provided the flight is nonpressurized.

(j) Additional 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 Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226; email *Tom.Rodriguez@faa.gov*.

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0202R1, dated September 10, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0202R1, 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.

(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 September 13, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–20126 Filed 9–14–21; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0477; Airspace Docket No. 21–AGL–10]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Belleville, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D and Class E airspace at Scott AFB/MidAmerica St. Louis Airport, Belleville, IL. This action is due to the results of a biennial airspace review. The name of the airport is also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, December 2, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class D airspace, the Class E airspace area designated as an extension to Class D airspace, and the Class E airspace extending upward from 700 feet above the surface at Scott AFB/MidAmerica St. Louis Airport, Belleville, IL, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (86 FR 33586; June 25, 2021) for Docket No. FAA–2021–0477 to amend the Class D and Class E airspace at Scott AFB/MidAmerica St. Louis Airport, Belleville, IL. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and E airspace designations are published in paragraph 5000, 6004, and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Differences From the NPRM

Subsequent to the publication of the NPRM, the FAA discovered a typographic error in the Class E airspace extending upward from 700 feet above the surface to at Scott AFB/MidAmerica St. Louis Airport airspace legal description. In the northeast extension, the extension should extend from the 7.4-mile radius vice 4.9-mile. Additionally, it was discovered that the extension proposed to be added southeast of the airport is captured by another extension and is therefore not required. As these changes do not affect

the Class E airspace as proposed, they are incorporated into this rule.

The Rule

This amendment to 14 CFR part 71:

Amends the Class D airspace at Scott AFB/MidAmerica St. Louis Airport, Belleville, IL, by removing the city associated with the airport to comply with changes to FAA Order 7400.2N, Procedures for Handling Airspace Matters; updating the name (previously Scott AFB/MidAmerica Airport) of the airport to coincide with the FAA's aeronautical database; and replacing the outdated term ''Airport/Facility Directory'' with ''Chart Supplement'';

Amends the Class E airspace area designated as an extension to Class D airspace at Scott AFB/MidAmerica St. Louis Airport by adding an extension 1.3 miles each side of the 048° bearing from the Scott TACAN extending from the 4.9-mile radius of the airport to 5.7 miles northeast of the Scott TACAN; amends the northwest extension to 1 mile (decreased from 1.5 miles) each side of the 314° (previously 312°) radial from the Scott TACAN extending from the 4.9-mile radius from the airport to 9.5 miles (decreased from 10 miles) northwest of the Scott TACAN; removes the city associated with the airport to comply with changes to FAA Order 7400.2N; updates the name of the airport (previously Scott AFB/MidAmerica Airport) to coincide with the FAA's aeronautical database; and replaces the outdated term ''Airport/Facility Directory'' with ''Chart Supplement'';

And amends the Class E airspace extending upward from 700 feet above the surface to at Scott AFB/MidAmerica St. Louis Airport by adding an extension 8 miles northwest and 10 miles southeast of the 048° bearing from the Scott TACAN extending from the 7.4-mile radius of the airport to 22 miles northeast of the Scott TACAN; amends the southeast extension to 1.5 miles (decreased from 1.7 miles) each side of the 142° (previously 140°) radial from the Scott TACAN extending from the 7.4-mile radius of the airport to 12.7 miles (decreased from 14 miles) southeast of the Scott TACAN; amends the northwest extension to 4 miles (increased from 1.5 miles) each side of the 314° (previously 312°) radial from the Scott TACAN extending from the 7.4-mile radius of the airport to 10.5 miles (increased from 10 miles) northwest of the Scott TACAN; removes the city associated with the airport to comply with changes to FAA Order 7400.2N; updates the name of the airport (previously Scott AFB/MidAmerica Airport) to coincide with the FAA's aeronautical database; and removes the exclusionary language as it is not required.

This action is due to the results of a biennial airspace review.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AGL IL D Belleville, IL [Amended]

Scott AFB/MidAmerica St. Louis Airport, IL
(Lat. 38°32′43″ N, long. 89°50′07″ W)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.9-mile radius of the Scott AFB/MidAmerica St. Louis Airport. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

AGL IL E4 Belleville, IL [Amended]

Scott AFB/MidAmerica St. Louis Airport, IL
(Lat. 38°32′43″ N, long. 89°50′07″ W)
Scott TACAN
(Lat. 38°32′43″ N, long. 89°51′06″ W)

That airspace extending upward from the surface within 1.3 miles each side of the 048° bearing from the Scott TACAN extending from the 4.9-mile radius of Scott AFB/MidAmerica St. Louis Airport to 5.7 miles northeast of the Scott TACAN, and within 1 mile each side of the 314° radial from the Scott TACAN extending from the 4.9-mile radius of the Scott AFB/MidAmerica St. Louis Airport to 9.5 miles northwest of the Scott TACAN. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

AGL IL E5 Belleville, IL [Amended]

Scott AFB/MidAmerica St. Louis Airport, IL
(Lat. 38°32′43″ N, long. 89°50′07″ W)
Scott TACAN
(Lat. 38°32′43″ N, long. 89°51′06″ W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Scott AFB/MidAmerica St. Louis Airport, and within 8 miles northwest and 10 miles southeast of the 048° bearing from the Scott TACAN extending from the 7.4-mile radius from Scott AFB/MidAmerica St. Louis Airport to 22 miles northeast of the Scott TACAN, and within 1.5 miles each side of the 142° radial from the Scott TACAN extending from the 7.4-mile radius of Scott AFB/MidAmerica St. Louis Airport to 12.7 miles southeast of the Scott TACAN, and within 4 miles each side of the 314° radial

from the Scott TACAN extending from the 7.4-mile radius of Scott AFB/MidAmerica St. Louis Airport to 10.5 miles northwest of the Scott TACAN.

Issued in Fort Worth, Texas, on September 9, 2021.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2021–19831 Filed 9–15–21; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 680

RIN 3084–AB63

Affiliate Marketing Rule

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is issuing a final rule (''Final Rule'') to amend its Affiliate Marketing Rule to correspond to changes made to the Fair Credit Reporting Act (''FCRA'') by the Dodd-Frank Act.

DATES: This rule is effective October 18, 2021.

FOR FURTHER INFORMATION CONTACT: David Lincicum (202–326–2773), Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Affiliate Marketing Rule

The Fair and Accurate Credit Transactions Act of 2003 (''FACT Act'') was signed into law on December 4, 2003. Public Law 108–159, 117 Stat. 1952. Section 214 of the FACT Act added a new section 624 to the FCRA. This provision gives consumers the right to restrict a person from using certain information obtained from an affiliate to make solicitations to that consumer. Section 624 generally provides that if a person receives certain consumer eligibility information from an affiliate, the person may not use that information to make solicitations to the consumer about its products or services, unless the consumer is given notice and an opportunity (via a simple method) to opt out of such use of the information, and the consumer does not opt out. The statute also provides that Section 624 does not apply, for example, to a person using eligibility information: (1) To make solicitations to a consumer with whom the person has a pre-existing business relationship; (2) to perform services for another affiliate subject to certain conditions; (3) in response to a communication initiated by the consumer; or (4) to make a solicitation that has been authorized or requested by the consumer. Unlike the FCRA affiliate sharing opt-out (15 U.S.C. 1681a(d)(2)(A)(iii)) and the opt-out of sharing with non-affiliated third parties under the Gramm-Leach-Bliley Act (''GLBA''), 15 U.S.C. 6801 *et seq.,* which apply indefinitely, Section 624 provides that a consumer's affiliate marketing opt-out election must be effective for a period of at least five years. Upon expiration of the opt-out period, the consumer must be given a renewal notice and an opportunity to renew the opt-out before information received from an affiliate may be used to make solicitations to the consumer.

The Commission published regulations implementing Section 624, the Affiliate Marketing Rule, 16 CFR part 680, on October 30, 2007.[1]

B. Dodd-Frank Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') was signed into law in 2010.[2] The Dodd-Frank Act substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred to the Consumer Financial Protection Bureau (''CFPB'') the Commission's rulemaking authority under portions of the FCRA.[3] Accordingly, in 2012, the Commission rescinded several of its FCRA rules, which had been replaced by rules issued by the CFPB.[4] The FTC retained rulemaking authority for other rules promulgated under the FCRA to the extent the rules apply to motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act[5] predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both (''motor vehicle dealers'').[6] The rules for which the FTC retains rulemaking authority include the Affiliate Marketing Rule, which now applies only to motor vehicle dealers.[7] Entities that are not motor vehicle dealers are covered by the CFPB's Regulation V, subpart C, which is substantially similar to the Commission's rule.[8]

II. Regulatory Review of the Affiliate Marketing Rule

On September 22, 2020, the Commission solicited comments on the Affiliate Marketing Rule as part of its periodic review of its rules and guides.[9] The Commission sought information about the costs and benefits of the rule, and its regulatory and economic impact. In addition, the Commission proposed amending the rule to narrow its scope to motor vehicle dealers excluded from CFPB jurisdiction as described in the Dodd-Frank Act.[10] The Commission received no comments.

III. Overview of Final Rule

The Commission promulgated the Affiliate Marketing Rule at a time when it had rulemaking authority for a broader group of entities. While the Dodd-Frank Act did not change the Commission's enforcement authority for the Affiliate Marketing Rule, it did narrow the Commission's rulemaking authority with respect to the rule. It now covers only motor vehicle dealers. The amendments in the Dodd-Frank Act necessitate a technical revision to the Affiliate Marketing Rule to ensure the regulation is consistent with the text of the amended FCRA. Accordingly, the Commission amends the Affiliate Marketing Rule to properly reflect the rule's scope.

The amendment to § 680.1(b) narrows the scope description of the Affiliate Marketing Rule to the entities excluded from CFPB jurisdiction as described in the Dodd-Frank Act.[11] It does so by replacing the broad term ''person'' with the term ''motor vehicle dealer,'' as defined in amended § 680.3.

The amendment to § 680.3 adds a definition of ''motor vehicle dealer'' that defines motor vehicle dealers as those entities excluded from CFPB jurisdiction as described in the Dodd-Frank Act.[12]

The amendments do not change the substantive provisions of the rule or the examples in the rule, even where those provisions and examples involve entities covered by the CFPB's rule rather than the Commission's rule. The

[1] 72 FR 61423 (October 30, 2007). Model forms for opt-out notices are published at 16 CFR part 698, appendix B.

[2] Public Law 111–203 (2010).

[3] 15 U.S.C. 1681 *et seq.* The Dodd-Frank Act does not transfer to the CFPB rulemaking authority for section 615(e) of the FCRA (''Red Flag Guidelines and Regulations Required'') and section 628 of the FCRA (''Disposal of Records''). *See* 15 U.S.C. 1681s(e).

[4] 77 FR 22200 (April 13, 2012).

[5] 12 U.S.C. 5519.

[6] 77 FR 22200 (April 13, 2012).

[7] *Id.*

[8] 12 CFR 1022.20 through 1022.27. There are no substantive differences between the two rules, but the two rules are organized differently and, in some cases, use different examples. *See, e.g.,* 12 CFR 1022.20(b)(4)(iii).

[9] 85 FR 59466 (September 22, 2020).

[10] 12 U.S.C. 5519.

[11] *Id.*

[12] *Id.*

primary reason for retaining these provisions and examples is that the rule addresses the relationship between covered motor vehicle dealers and their affiliates, which may not be motor vehicle dealers. The obligations and exceptions set forth by the rule are inextricably linked to a consumer's relationship and actions in relation to all affiliates, both motor vehicle dealers and non-motor vehicle dealers. In order for the rule to apply meaningfully, it must address both types of entities, even those not directly covered by the rule. This will not create any conflict with the CFPB's corresponding rule, as the Commission's Affiliate Marketing Rule and the CFPB's rule are substantially similar and impose the same obligations and exceptions on entities they cover.

IV. Paperwork Reduction Act

The Affiliate Marketing Rule contains information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (''OMB'') regulations that implement the Paperwork Reduction Act (''PRA''). 44 U.S.C. 3501 *et seq.* OMB has approved the rule's existing information collection requirements through February 28, 2023 (OMB Control No. 3084–0131). Under the existing clearance, the FTC has attributed to itself the estimated burden regarding all motor vehicle dealers and shares equally the remaining estimated PRA burden with the CFPB for other persons for which both agencies have enforcement authority.

The Final Rule amends 16 CFR part 680. The amendments do not modify or add to information collection requirements previously approved by OMB. The amendments make no substantive changes to the rule, other than to clarify that the scope of the rule is limited to motor vehicle dealers. The rule's OMB clearance already reflects that scope. Therefore, the Commission does not believe the amendments substantially or materially modify any ''collections of information'' as defined by the PRA.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to either provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule, or certify that the proposed rule will not have a significant impact on a substantial number of small entities.[13] The Commission published an Initial Regulatory Flexibility Analysis in order to inquire into the impact of the proposed rule on small entities.[14] The Commission received no responsive comments.

The Commission does not believe these amendments have the threshold impact on small entities. The amendments effectuate changes to the Dodd-Frank Act and will not impose costs on small motor vehicle dealers because the amendments are for clarification purposes and will not result in any increased burden on any motor vehicle dealer. Thus, a small entity that complies with current law need not take any different or additional action under the Final Rule. Therefore, the Commission certifies that amending the Affiliate Marketing Rule will not have a significant economic impact on a substantial number of small businesses.

Although the Commission certifies under the RFA that the Final Rule will not have a significant impact on a substantial number of small entities, and hereby provides notice of that certification to the Small Business Administration, the Commission nonetheless has determined publishing a final regulatory flexibility analysis (''FRFA'') is appropriate to ensure the impact of the rule is fully addressed. Therefore, the Commission has prepared the following analysis:

A. Need for and Objectives of the Final Rule

To address the Dodd-Frank Act's changes to the Commission's rulemaking authority, the amendments clarify that the rule applies only to motor vehicle dealers.

B. Significant Issues Raised in Public Comments in Response to the IRFA

The Commission did not receive any comments that addressed the burden on small entities. In addition, the Commission did not receive any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (''SBA'').

C. Estimate of Number of Small Entities to Which the Final Rule Will Apply

The Commission anticipates many covered motor vehicle dealers may qualify as small businesses according to the applicable SBA size standards. As explained in the IRFA, however, determining a precise estimate of the number of small entities is not readily feasible. No commenters addressed this issue. Nonetheless, as discussed above, these amendments do not add any additional burdens on any covered small businesses.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements, Including Classes of Covered Small Entities and Professional Skills Needed To Comply

The amendments impose no new reporting, recordkeeping, or other compliance requirements.

E. Description of Steps Taken To Minimize Significant Economic Impact, if any, on Small Entities, Including Alternatives

The Commission did not propose any specific small entity exemption or other significant alternatives because the amendments will not increase reporting requirements and will not impose any new requirements or compliance costs.

VI. Other Matters

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

List of Subjects in 16 CFR Part 680

Consumer protection, Credit, Trade practices.

For the reasons stated above, the Federal Trade Commission amends part 680 of title 16 of the Code of Federal Regulations as follows:

PART 680—AFFILIATE MARKETING

■ 1. Revise the authority citation for part 680 to read as follows:

Authority: 12 U.S.C. 5519(d); 15 U.S.C. 1681s–3; 15 U.S.C. 1681s–3 note.

■ 2. In § 680.1, revise paragraph (b) to read as follows:

§ 680.1 Purpose and scope.

* * * * *

(b) *Scope.* This part applies to any motor vehicle dealer as defined in § 680.3 that uses information from its affiliates for the purpose of marketing solicitations, or provides information to its affiliates for that purpose.

■ 3. In § 680.3, redesignate paragraphs (i) through (l) as paragraphs (j) through (m) and add a new paragraph (i) to read as follows:

§ 680.3 Definitions.

* * * * *

(i) *Motor vehicle dealer.* The term ''motor vehicle dealer'' means any person excluded from Consumer Financial Protection Bureau jurisdiction as described in 12 U.S.C. 5519.

* * * * *

[13] 5 U.S.C. 603–605.

[14] 85 FR 59466, 59469 (Sept. 22, 2020).

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2021–19826 Filed 9–15–21; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

[Docket No. USPC–2021–03]

RIN 1104–AA08

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 regulation to reopen and advance a parole date to explicitly reference medical and compassionate reasons as bases for reopening.

DATES: This regulation is effective September 16, 2021. Comments due on or before October 18, 2021.

ADDRESSES: Submit your comments, identified by docket identification number USPC–2021–03 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: The Parole Commission's regulation at 28 CFR 2.15 provides that after the prisoner has served the minimum term, the Bureau of Prisons (''BOP'') may petition the Commission to reopen the case under 28 CFR 2.28(a) to consider the case for parole prior to the date set by the Commission at the initial or review hearing. The regulation requires that the BOP's request show cause for earlier release and provides examples such as ''an emergency, hardship, or the existence of other extraordinary circumstances that would warrant consideration of early parole.'' These examples encompass a very broad set of circumstances that the Commission could consider, which would include illness and aging.

The Commission is not limited to only considering requests from the BOP, the regulation at 28 CFR 2.28(a), which is used for reopening a case for favorable information, can be used to consider a request from other sources, such as the prisoner or a family member. Revising the heading of the regulation will help to highlight its use to consider prisoners for compassionate release in addition to the ''favorable information'' that the Commission usually considers, such as program achievement in the institution. Revising the text of the regulation to include medical and other ''extraordinary and compelling'' information will broaden the circumstances that the Commission can consider for possible advancement of the release date.

Section 2.28(a) permits advancement of a presumptive parole date to an earlier presumptive parole date, advancement of a presumptive parole date to an earlier effective parole date, advancement of a continue to expiration decision to a presumptive or effective parole date, and advancement of a 15-year reconsideration hearing to a presumptive or effective parole date without conducting a hearing. The Commissioner reopening the decision does have the option of ordering a reconsideration hearing to consider this new information.

The Commission is promulgating this rule as an interim rule and is providing a 30-day period for public comment. The revised 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 they 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. Revise § 2.28(a) to read as follows:

§ 2.28 Reopening of cases.

(a) *Favorable information or information supporting medical parole or compassionate release.* Upon the receipt of new information of substantial significance favorable to the prisoner, including medical information, or other extraordinary and compelling information, a Commissioner may reopen a case (including an original jurisdiction case), and order a special reconsideration hearing on the next available docket, or modify the previous decision. The advancement of a presumptive release date or a decision to continue to a 15-year reconsideration hearing requires the concurrence of two Commissioners.

* * * * *

Patricia K. Cushwa,

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

[FR Doc. 2021–19917 Filed 9–15–21; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0117]

RIN 1625–AA00

Safety Zones; Hampton Roads Bridge-Tunnel Expansion Project, Hampton/Norfolk, VA

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing safety zones for certain waters of the Hampton Flats, Willoughby Bay, a defined area between Phoebus Channel and the North Trestle Bridge, and 3 zones around the North Trestle Bridge including the North Island, the South Trestle Bridge including the South Island, and the north and south side of the Willoughby Bay Bridge. This action is necessary to provide for the safety of life on these navigable waters in support of the Hampton Roads Bridge-Tunnel Expansion Project that will take place from 2021 through 2025. This rule prohibits persons and vessels from being in the safety zones unless authorized by the Captain of the Port Sector Virginia or a designated representative or under conditions specified in this rule.

DATES: This rule is effective without actual notice September 16, 2021, though December 25, 2025. For the purposes of enforcement, actual notice will be used from September 10, 2021, until September 16, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0117 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Ashley Holm, Waterways Management Division Chief, Sector Virginia, U.S. Coast Guard; telephone 757–668–5580, email *Ashley.E.Holm@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP U.S. Coast Guard Captain of the Port
DHS Department of Homeland Security
FR Federal Register
HRBT Hampton Roads Bridge-Tunnel
HRCP Hampton Roads Connector Partners
NPRM Notice of proposed rulemaking
NSRA Navigation Safety Risk Assessment
§ Section
U.S.C. United States Code
USCG United States Coast Guard
USACE United States Army Corps of Engineers

II. Background Information and Regulatory History

In April 2019, the Virginia Department of Transportation (VDOT) awarded the design and construction of the Hampton Roads Bridge-Tunnel (HRBT) Expansion Project to the Hampton Roads Connector Partners (HRCP), as the Design-Build contactor. The HRBT Expansion Project is a major road transport infrastructure project that will create an 8-lane facility with 6 consistent use lanes along 9.9 miles of Interstate 64 (I–64), from Settler's Landing Interchange in Hampton, Virginia, to the Interstate 564 (I–564) interchange in Norfolk, Virginia. To better understand the waterways impact from the project, the USCG and U.S. Army Corps of Engineers (USACE) recommended the submission of a formal Navigation Safety Risk Assessment (NSRA) and Tunnel Construction Plan (TCP) prior to any permit or approval action by the U.S. Army Corps of Engineers.[1] The NSRA identified three key objectives for consideration. The first included potential impacts to current and forecasted vessel traffic directly related to the bridge and tunnel construction including all on-water operations and staging areas. The second aimed to identify the best/least disruptive times to schedule movement of construction-related vessels. Finally, it identified the measures necessary for implementation in order to minimize potential hazards to navigation. On-water construction activities are expected to last approximately 5 years (2021–2025). In support of construction efforts, multiple surface craft will be necessary on-site, transiting to and from, as well as pre-staged, to ensure continued operations are maintained. The increase in waterborne traffic in the vicinity of construction areas and staging areas will introduce hazards to waterways users prior to and throughout the duration of the construction project. Specific hazards during the construction project include the proximity of dozens of construction-related vessels in the bridge area and fleeting areas, including material barges and construction equipment barges. In addition, construction of navigable spans by this equipment, as well as construction lighting and loud construction activity noises will make normal passage through the bridge areas unsafe except in areas specifically established as safe transit corridors by the project contractors, HRCP. The Sector Virginia Captain of the Port (COTP) has determined that these potential hazards associated with the HRBT Expansion Project will be a safety concern for anyone transiting in the vicinity of on-water construction activities related to the project. To discuss these safety concerns, representatives of the HRCP along with the COTP's staff conducted a series of outreach meetings. These meetings covered the HRBT Expansion Project and the notional safety zones that would mitigate the hazards discussed above. Due to the COVID–19 pandemic, those outreach meetings were conducted virtually on May 5th, 6th, and 7th, 2020. They were announced beforehand by a marine safety information bulletin[2] issued by the COTP, which is distributed to over 1,000 subscribed maritime stakeholders by email, along with direct email notification to community organizations in the coastal areas of the cities of Norfolk and Hampton, Virginia, which are the two cities in the immediate area of the construction activity. Twenty-six

[1] *See* Memorandum of Agreement between the United States Army Corps of Engineers and the United States Coast Guard, dated June 2, 2000 (available at: *https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll11/id/2518*).

[2] *See* USCG Sector Virginia Marine Safety Information Bulletin #20–113 (available at *https://content.govdelivery.com/accounts/USDHSCG/bulletins/289cb80*).

individuals in addition to Coast Guard personnel participated in the meetings. The feedback received was consistent that the HRBT Expansion Project would create hazards to navigation for recreational vessels and that the suggested safety zones would help mitigate the risks. Additionally, community members expressed support that HRCP would have the ability to designate safe transit corridors through the South Trestle Bridge and Willoughby Bay Bridge to ensure that coastal property owners could still access the waters of Hampton Roads and southern Chesapeake Bay during the duration of the construction project. The text of the regulation has been drafted to incorporate feedback from these sessions.

On August 5, 2021, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Safety Zones; Hampton Roads Bridge-Tunnel Expansion Project,'' 86 FR 42758. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this project. During the comment period that ended September 7, 2021, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest. Immediate action is needed to respond to the potential safety hazards associated with the HRBT construction project.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Virginia (COTP) has determined that potential hazards associated with the Hampton Roads Bridge Tunnel Project beginning in summer 2021 will be a safety concern for anyone operating within the vicinity of the construction related activity. The purpose of this rule is to ensure safety of vessels operating in the vicinity of all construction related activity in support of the HRBT and the navigable waters in the safety zone for the duration of the project.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published August 7, 2021. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes multiple safety zones to promote safety to waterways users during the HRBT Expansion Project. The Coast Guard currently anticipates the need for 6 safety zones. The safety zones will be used to accommodate pre-staged waterborne equipment and establish buffer zones around two marine staging areas, one safe harbor in case of anticipated severe weather, and the marine construction work sites expected in the vicinity of the North Trestle Bridge and North Island, South Trestle Bridge and South Island and the north and south side of the Willoughby Bay Bridge.

The first safety zone (*Zone 1:* Hampton Flats Mooring Area) is being established in the Hampton Flats covering a mooring/staging area to accommodate 6 barges. Specifically, the first safety zone covers all waters of the Hampton Flats, from surface to bottom, encompassed by a line connecting the following points beginning at 36°59′40.41″ N, 76°22′10.66″ W, thence to 37°00′01.84″ N, 76°21′01.69″ W, thence to 36°59′52.62″ N, 76°20′57.23″ W, thence to 36°59′31.19″ N, 76°22′06.20″ W, and back to the beginning point. The Hampton Flats Mooring Area will provide critical staging capability necessary to the project. Once the HRCP begins the installation of mooring buoys within the mooring area, the public will be restricted entry or mooring within the safety zone. Mariners will be required to observe lighted marker buoys along the perimeter and at each of the corners marking the safety zone. In the event of inclement weather, this mooring/staging area will not be able to be used for safe refuge.

The second safety zone (*Zone 2:* Phoebus Safe Harbor Area) is being established as a safe harbor area between Phoebus Channel and the North Trestle Bridge in the event of anticipated severe weather. Specifically, it covers all waters west of the Phoebus Channel, from surface to bottom, encompassed by a line connecting the following points beginning at 37°00′34.26″ N, 76°19′10.58″ W, thence to 37°00′23.97″ N, 76°19′06.16″ W, thence to 37°00′22.52″ N, 76°19′11.41″ W, thence to 37°00′32.81″ N, 76°19′15.81″ W, and back to the beginning point. While this rule is effective, no vessel or person would be permitted to anchor within the safety zone during announced enforcement periods without first obtaining permission from the COTP or designated representative. Such announcements will be made by Sector Virginia Broadcast Notice to Mariners and broadcasts on VHF–FM radio. During enforcement periods, mariners will be required to observe lighted marker buoys along the perimeter and at each of the corners marking the safety zone.

The third safety zone (*Zone 3:* Willoughby Safe Harbor/Mooring Area) is being established as a mooring area/safe harbor area in Willoughby Bay. Specifically, it covers all waters of Willoughby Bay, from surface to bottom, encompassed by a line connecting the following five points beginning at 36°57′48.68″ N, 76°17′08.20″ W, thence to 36°57′44.84″ N, 76°16′44.48″ W, thence to 36°57′35.31″ N, 76°16′42.80″ W, thence to 36°57′28.78″ N, 76°16′51.75″ W, thence to 36°57′33.17″ N, 76°17′19.43″ W, and back to the beginning point. Once the HRCP begins the installation of mooring buoys within the mooring area, the public will be restricted entry or mooring within the safety zone unless permission from the COTP, HRCP, or their designated representative is granted on a case-by-case basis. Mariners will be required to observe lighted marker buoys along the perimeter and at each of the corners marking the safety zone.

The fourth safety zone (*Zone 4:* North Trestle Bridge and North Island) is being established from surface to bottom for the safety of waterways users in the vicinity of ongoing construction activity on the east and west sides of the Hampton Roads Bridge-Tunnel's north bridge trestle and North Island. No vessel or person at any time will be permitted within the fixed safety zone, 300 feet from the east or west side of the North Trestle Bridge or the North Island. All mariners attempting to enter or depart the Hampton Creek Approach Channel or the Phoebus Channel in the vicinity of the North Island will be required to proceed with extreme caution and maintain a safe distance from construction equipment. Passing arrangements, if necessary, will be allowed to be requested from the on-site foreman via VHF Channel 13 and 16 at any time.

The fifth safety zone (*Zone 5:* South Trestle Bridge and South Island) is being established, from surface to bottom, 300 feet from the east or west side of the South Trestle Bridge or the South Island. This zone is needed for the safety of waterways users in the vicinity of ongoing construction activity on the east and west sides of the Hampton Roads Bridge-Tunnel's south bridge trestle and South Island. No vessel or person at any time will be permitted within the fixed safety zone without permission of the COTP or HRCP, or their designated representatives. HRCP may establish

and post visual identification of safe transit corridors that vessels may use to freely proceed through the safety zone. All mariners attempting to enter or depart the Willoughby Bay Approach Channel in the vicinity of the South Island will be required to proceed with extreme caution and maintain a safe distance from construction equipment.

The sixth safety zone (*Zone 6:* Willoughby Bay Bridge) is being established, from surface to bottom, within 50 feet of the north side and 300 feet of the south side of the Willoughby Bay Bridge. This safety zone is needed for the safety of waterways users in the vicinity of ongoing construction activity on the north and south sides of the Willoughby Bay Bridge. No vessel or person may enter or remain in the safety zone without permission of the COTP, HRCP, or designated representative, except that vessels are allowed to transit through marked safe transit corridors that HRCP shall establish for the purpose of providing navigation access for residents located north of the Willoughby Bay Bridge through the safety zone. All mariners attempting to enter or depart residences or commercial facilities north of the Willoughby Bay Bridge through the safe transit corridors or other areas of the safety zone when granted permission shall proceed with caution and maintain a safe distance from construction equipment. Mariners requesting to transit through other areas of the safety zone may do so at any time by contacting the on-site foreman via VHF Channel 13 and 16.

The regulatory text appears at the end of this document.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on a comprehensive marine traffic survey conducted for all current and forecasted vessel traffic in the vicinity of the HRBT Expansion Project. The survey was used to inform mitigation strategies, minimize disruptions to navigation, reduce risks of marine casualties and determine the size, location, duration and time-of-day of the recommended safety zones.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves 6 safety zones that will be activated for the duration of the HRBT Expansion Project. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction

Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.519 to read as follows:

§ 165.519 Safety Zones; Hampton Roads Bridge-Tunnel Expansion Project, Hampton/Norfolk, VA.

(a) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Virginia (COTP) in the enforcement of the safety zone. The term also includes an employee or contractor of Hampton Roads Connector Partners (HRCP) for the sole purposes of designating and establishing safe transit corridors, to permit passage into or through these safety zones, or to notify vessels and individuals that they have entered a safety zone and are required to leave.

(b) *Locations and zone-specific requirements*—(1) *Zone 1, Hampton Flats Mooring Area*—(i) *Location.* All waters of the Hampton Flats, from surface to bottom, encompassed by a line connecting the following points beginning at 36°59′40.41″ N, 76°22′10.66″ W, thence to 37°00′01.84″ N, 76°21′01.69″ W, thence to 36°59′52.62″ N, 76°20′57.23″ W, thence to 36°59′31.19″ N, 76°22′06.20″ W, and back to the beginning point.

(ii) *Requirements.* No vessel or person may enter or remain in the safety zone without permission of the COTP, HRCP, or designated representative. Mariners must observe lighted marker buoys along the perimeter and at each of the corners marking the safety zone.

(2) *Zone 2, Phoebus Safe Harbor Area*—(i) *Location.* All waters west of the Phoebus Channel, from surface to bottom, encompassed by a line connecting the following points beginning at 37°00′34.26″ N, 76°19′10.58″ W, thence to 37°00′23.97″ N, 76°19′06.16″ W, thence to 37°00′22.52″ N, 76°19′11.41″ W, thence to 37°00′32.81″ N, 76°19′15.81″ W, and back to the beginning point.

(ii) *Requirements.* No vessel or person may enter or remain in the safety zone during announced enforcement periods without permission of the COTP, HRCP, or designated representative. Such enforcement periods will be announced by Sector Virginia Broadcast Notice to Mariners and broadcasts on VHF–FM radio. During enforcement periods, mariners shall observe lighted marker buoys along the perimeter and at each of the corners marking the safety zone.

(3) *Zone 3, Willoughby Bay Mooring Area*—(i) *Location.* All waters of Willoughby Bay, from surface to bottom, in the area encompassed by a line connecting the following points beginning at 36°57′48.68″ N, 76°17′08.20″ W, thence to 36°57′44.84″ N, 76°16′44.48″ W, thence to 36°57′35.31″ N, 76°16′42.80″ W, thence to 36°57′28.78″ N, 76°16′51.75″ W, thence to 36°57′33.17″ N, 76°17′19.43″ W, and back to the beginning point.

(ii) *Requirements.* No vessel or person may enter or remain in the safety zone without permission of the COTP, HRCP, or designated representative. Mariners must observe lighted marker buoys along the perimeter and at each of the corners marking the safety zone.

(4) *Zone 4, North Highway Bridge Trestle and North Island*—(i) *Location.* All waters, from surface to bottom, located within 300 feet of the east or west side of the Hampton Roads Bridge-Tunnel's north highway bridge trestle, including North Island, to the shore of the City of Hampton. No vessel or person may enter or remain in the safety zone without permission of the COTP, HRCP, or designated representative.

(ii) *Requirements.* All mariners attempting to enter or depart the Hampton Creek Approach Channel or the Phoebus Channel in the vicinity of the North Island must proceed with extreme caution and maintain a safe distance from construction equipment.

(5) *Zone 5, South Highway Bridge Trestle and South Island*—(i) *Location.* All waters, from surface to bottom, located within 300 feet from the east or west side of the Hampton Roads Bridge-Tunnel's south highway bridge trestle, including South Island, to the shore of the City of Norfolk.

(ii) *Requirements.* No vessel or person may enter or remain in the safety zone without permission of the COTP, HRCP, or designated representative. HRCP may establish and post visual identification of safe transit corridors that vessels may use to freely proceed through the safety zone. All mariners attempting to enter or depart the Willoughby Bay Approach Channel in the vicinity of the South Island shall proceed with extreme caution and maintain a safe distance from construction equipment.

(6) *Zone 6, Willoughby Bay Bridge*—(i) *Location.* All waters, from surface to bottom, located along the Willoughby Bay Bridge highway trestle and extending 50 feet to the north side of the bridge and 300 feet to the south side of the bridge along the length of the highway trestle, from shore to shore within the City of Norfolk.

(ii) *Requirements.* No vessel or person may enter or remain in the safety zone without permission of the COTP, HRCP, or designated representative, except that vessels are allowed to transit through marked safe transit corridors that HRCP shall establish for the purpose of providing navigation access for residents located north of the Willoughby Bay Bridge through the safety zone. All mariners attempting to enter or depart residences or commercial facilities north of the Willoughby Bay Bridge through the safe transit corridors or other areas of the safety zone when granted permission shall proceed with caution and maintain a safe distance from construction equipment.

(c) *General requirements.* (1) Under the general safety zone regulations in subpart C of this part, no vessel or person may enter or remain in any safety zone described in paragraph (b) of this section unless authorized by the COTP, HRCP, or designated representative. If a vessel or person is notified by the COTP, HRCP, or designated representative that they have entered one of these safety zones without permission, they are required to immediately leave in a safe manner following the directions given.

(2) Mariners requesting to transit any of these safety zones must first contact the HRCP designated representative, the on-site foreman, via VHF–FM channels 13 and 16. If permission is granted, mariners must proceed at their own risk

and strictly observe any and all instructions provided by the COTP, HRCP, or designated representative to the mariner regarding the conditions of entry to and exit from any location within the fixed safety zones.

(d) *Enforcement.* The Sector Virginia COTP may enforce the regulations in this section and may be assisted by any Federal, state, county, or municipal law enforcement agency.

Dated: September 10, 2021.

Samson C. Stevens,

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

[FR Doc. 2021–20006 Filed 9–15–21; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2020–0513; FRL–8320–01–OCSPP] RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (21–1.B)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances which were the subject of premanufacture notices (PMNs). This action requires persons to notify EPA at least 90 days before commencing manufacture (defined by statute to include import) or processing of any of these chemical substances for an activity that is designated as a significant new use by this rule. This action further requires that persons not commence manufacture or processing for the significant new use until they have submitted a Significant New Use Notice (SNUN), EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken any risk management actions as are required as a result of that determination.

DATES: This rule is effective on November 15, 2021. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (E.S.T.) on September 30, 2021.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: William Wysong, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–4163; email address: *wysong.william@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA, which would include the SNUR requirements. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import provisions. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, pursuant to 40 CFR 721.20, any persons who export or intend to export a chemical substance that is the subject of this rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. How can I access the docket?

The docket includes information considered by the Agency in developing the proposed and final rules. The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2020–0513, is available at *https://www.regulations.gov* and at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

Due to the public health emergency, 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.*

II. Background

A. What action is the Agency taking?

EPA is finalizing SNURs under TSCA section 5(a)(2) for chemical substances which were the subject of PMNs P–18–175 and P–19–38. These SNURs require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity.

Previously, in the **Federal Register** of November 16, 2020 (85 FR 73007) (FRL–10016–39), EPA proposed SNURs for these chemical substances. More information on the specific chemical substances subject to this final rule can be found in the **Federal Register** document proposing the SNURs. The docket includes information considered by the Agency in developing the proposed and final rules, including public comments and EPA's responses to the public comments received on the proposed rules, as described in Unit IV.

B. What is the Agency's authority for taking this action?

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four TSCA section 5(a)(2) factors listed in Unit III.

C. Do the SNUR general provisions apply?

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. Pursuant to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of

PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), 5(h)(2), 5(h)(3), and 5(h)(5) and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the significant new use is not likely to present an unreasonable risk of injury or take such regulatory action as is associated with an alternative determination before manufacture or processing for the significant new use can commence. If EPA determines that the significant new use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, and potential human exposures and environmental releases that may be associated with the substances, in the context of the four bulleted TSCA section 5(a)(2) factors listed in this unit. During its review of these chemicals, EPA identified certain conditions of use that are not intended by the submitters, but reasonably foreseen to occur. EPA is designating those reasonably foreseen conditions of use as well as certain other circumstances of use as significant new uses.

IV. Public Comments

EPA received public comments from four identifying entities on the proposed rule. The Agency's responses are described in a separate Response to Public Comments document that is available in the public docket for this rulemaking. Two of the comments were broadly supportive of the rule and requested no changes to the rule itself; therefore, no response is required. EPA made no changes to the final rule as a result of these comments.

V. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for chemical substances in 40 CFR part 721, subpart E. In Unit IV. of the proposed SNUR, EPA provided the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the SNUR.
- Potentially useful information.
- CFR citation assigned in the regulatory text section of this final rule.

The regulatory text section of these rules specifies the activities designated as significant new uses. Certain new uses, including production volume limits and other uses designated in the rules, may be claimed as CBI.

VI. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are the subject of these SNURs and as further discussed in Unit IV. of the proposed rule, EPA identified certain other reasonably foreseen conditions of use in addition to those conditions of use intended by the submitter. EPA has determined that the chemical under the intended conditions of use is not likely to present an unreasonable risk. However, EPA has not assessed risks associated with the reasonably foreseen conditions of use. EPA is designating these conditions of use as well as certain other circumstances of use as significant new uses. As a result, those significant new uses cannot occur without going through a separate, subsequent EPA review and determination process associated with a SNUN.

B. Objectives

EPA is issuing these SNURs because the Agency wants:

- To have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- To be obligated to make a determination under TSCA section 5(a)(3) regarding the use described in the SNUN, under the conditions of use. The Agency will either determine under section 5(a)(3)(C) that the significant new use is not likely to present an unreasonable risk, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, or make a determination under TSCA section 5(a)(3)(A) or (B) and take the required regulatory action associated with the determination, before manufacture or processing for the significant new use of the chemical substance can occur.
- To be able to complete its review and determination on each of the PMN substances, while deferring analysis on the significant new uses proposed in these rules unless and until the Agency receives a SNUN.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at *https://www.epa.gov/tsca-inventory.*

VII. Applicability of the Rules to Uses Occurring Before the Effective Date of the Final Rule

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule were undergoing premanufacture review at the time of signature of the proposed rule and were not on the TSCA inventory. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for the chemical substances subject to these SNURs, EPA concluded at the time of signature of the proposed rule that the designated significant new uses were not ongoing.

EPA designated November 16, 2020 (the date of web posting of the proposed rule) as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach is to ensure that a person cannot defeat a SNUR by initiating a significant new use before the effective date of the final rule.

Persons who began commercial manufacture or processing of the chemical substances for a significant new use identified on or after that date will have to cease any such activity upon the effective date of the final rule.

To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and EPA would have to take action under TSCA section 5 allowing manufacture or processing to proceed.

VIII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require development of any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, Order or consent agreement under TSCA section 4, then TSCA section 5(b)(1)(A) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, Order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. of the proposed rule lists potentially useful information for all SNURs listed here. Descriptions are provided for informational purposes. The potentially useful information identified in Unit IV. of the proposed rule will be useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use. Companies who are considering submitting a SNUN are encouraged, but not required, to develop the information on the substance, which may assist with EPA's analysis of the SNUN.

EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol election. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h). For more information on alternative test methods and strategies to reduce vertebrate animal testing, visit *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/alternative-test-methods-and-strategies-reduce.*

The potentially useful information described in Unit IV. of the proposed rule may not be the only means of providing information to evaluate the chemical substance associated with the significant new uses. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA sections 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.

IX. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 721.25. E–PMN software is available electronically at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca.*

X. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket for this rulemaking.

XI. Statutory and Executive Order Reviews

Additional information about these statutes and executive orders can be found at *https://www.epa.gov/laws-regulations-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

This action establishes SNURs for new chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

According to PRA, 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

The listing of the OMB control numbers of the collection instruments and their subsequent codification in the table in 40 CFR 9.1 satisfies the display requirements of the PRA and OMB's implementing regulations at 5 CFR part 1320. Since this ICR was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table in 40 CFR part 9, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table in 40 CFR 9.1 without further notice and comment.

C. Regulatory Flexibility Act (RFA)

Pursuant to RFA section 605(b), 5 U.S.C. 601 *et seq.,* I hereby certify that promulgation of this SNUR would not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any

person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was seven in Federal fiscal year (FY) 2013, 13 in FY2014, six in FY2015, 12 in FY2016, 13 in FY2017, and 11 in FY2018. Only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $16,000 to $2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about $10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132: Federalism

This action will not have federalism implications because it is not expected to have a substantial direct effect on 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).

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action will not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes, significantly or uniquely affect the communities of Indian Tribal governments and does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000), do not apply to this action.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

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

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.,* and EPA will submit a rule report containing this rule and other required information to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 7, 2021.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

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

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, amend the table by adding entries for §§ 721.11566 and 721.11567 in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.11566	2070–0012
721.11567	2070–0012
* * * * *	

* * * * *

PART 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

Subpart E—Significant New Uses for Specific Chemical Substances

■ 4. Add §§ 721.11566 and 721.11567 to subpart E to read as follows:

§ 721.11566 Formaldehyde, polymer with 4-(1,1-dimethylethyl)phenol and phenol, Buether.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as formaldehyde, polymer with 4-(1,1-dimethylethyl)phenol and phenol, Buether (PMN P–18–175; CAS No. 2215936–67–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=1.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11567 Fatty acids, coco, iso-Bu esters.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as fatty acids, coco, iso-Bu esters (PMN P–19–38; CAS No. 91697–43–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=1.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2021–20023 Filed 9–15–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2020–0411; FRL–8214–02–OCSPP]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (20–9.B)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances which were the subject of premanufacture notices (PMNs). This action requires persons to notify EPA at least 90 days before commencing manufacture (defined by statute to include import) or processing of any of these chemical substances for an activity that is designated as a significant new use by this rule. This action further requires that persons not commence manufacture or processing for the significant new use until they have submitted a Significant New Use Notice (SNUN), EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken any risk management actions as are required as a result of that determination.

DATES: This rule is effective on November 15, 2021. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on September 30, 2021.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: William Wysong, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–4163; email address: *wysong.william@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA, which would include the SNUR requirements. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import provisions. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, pursuant to 40 CFR 721.20, any persons who export or intend to export a chemical substance that is the subject of this rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. How can I access the docket?

The docket includes information considered by the Agency in developing the proposed and final rules. The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2020–0411, is available at *https://www.regulations.gov* and at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

Due to the public health emergency, 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.*

II. Background

A. What action is the Agency taking?

EPA is finalizing SNURs under TSCA section 5(a)(2) for chemical substances

which were the subject of PMNs P–16–538, and P–18–308. These SNURs require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity.

Previously, in the **Federal Register** of October 16, 2020 (85 FR 65782) (FRL–10014–34), EPA proposed SNURs for these chemical substances. More information on the specific chemical substances subject to this final rule can be found in the **Federal Register** document proposing the SNURs. The docket includes information considered by the Agency in developing the proposed and final rules, including public comments and EPA's responses to the public comments received on the proposed rules, as described in Unit IV.

B. What is the Agency's authority for taking this action?

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four TSCA section 5(a)(2) factors listed in Unit III.

C. Do the SNUR general provisions apply?

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. Pursuant to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), 5(h)(2), 5(h)(3), and 5(h)(5) and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the significant new use is not likely to present an unreasonable risk of injury or take such regulatory action as is associated with an alternative determination before manufacture or processing for the significant new use can commence. If EPA determines that the significant new use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

A. Determination Factors

TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, and potential human exposures and environmental releases that may be associated with the substances, in the context of the four bulleted TSCA section 5(a)(2) factors listed in this unit. During its review of these chemicals, EPA identified certain conditions of use that are not intended by the submitters, but reasonably foreseen to occur. EPA is designating those reasonably foreseen conditions of use as well as certain other circumstances of use as significant new uses.

B. Procedures for Significant New Uses Claimed as Confidential Business Information (CBI)

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1) and has referenced it to apply to other SNURs.

Under these procedures a manufacturer or processor may request EPA to determine whether a specific use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in 40 CFR 721.1725(b)(1) with that under 40 CFR 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, *i.e.,* the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the annual production volume limit is not exceeded by the amount identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

IV. Public Comments

EPA received public comments from two identifying entities on the proposed rule. In addition, EPA received three anonymous comments. The three anonymous comments and one of the comments from identifying entities were either general in nature and did not pertain to the proposed rule or were broadly supportive of the rule; therefore, no response is required. The Agency's response to the other comment is described in a separate Response to Public Comments document that is available in the public docket for this rulemaking. EPA made no changes to the final rule based on these comments.

V. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for chemical substances in 40 CFR part 721, subpart E. In Unit IV. of the proposed SNUR, EPA provided the following information for each chemical substance:

- PMN number.

- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the SNUR.
- Potentially useful information.
- CFR citation assigned in the regulatory text section of this final rule.

The regulatory text section of these rules specifies the activities designated as significant new uses. Certain new uses, including production volume limits and other uses designated in the rules, may be claimed as CBI.

VI. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are the subject of these SNURs and as further discussed in Unit IV. of the proposed rule, EPA identified certain other reasonably foreseen conditions of use in addition to those conditions of use intended by the submitter. EPA has determined that the chemical under the intended conditions of use is not likely to present an unreasonable risk. However, EPA has not assessed risks associated with the reasonably foreseen conditions of use. EPA is designating these conditions of use as well as certain other circumstances of use as significant new uses. As a result, those significant new uses cannot occur without going through a separate, subsequent EPA review and determination process associated with a SNUN.

B. Objectives

EPA is issuing these SNURs because the Agency wants:

- To have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- To be obligated to make a determination under TSCA section 5(a)(3) regarding the use described in the SNUN, under the conditions of use. The Agency will either determine under section 5(a)(3)(C) that the significant new use is not likely to present an unreasonable risk, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, or make a determination under TSCA section 5(a)(3)(A) or (B) and take the required regulatory action associated with the determination, before manufacture or processing for the significant new use of the chemical substance can occur.
- To be able to complete its review and determination on each of the PMN substances, while deferring analysis on the significant new uses proposed in these rules unless and until the Agency receives a SNUN.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at *https://www.epa.gov/tsca-inventory.*

VII. Applicability of the Rules to Uses Occurring Before the Effective Date of the Final Rule

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule were undergoing premanufacture review at the time of signature of the proposed rule and were not on the TSCA inventory. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for the chemical substances subject to these SNURs, EPA concluded at the time of signature of the proposed rule that the designated significant new uses were not ongoing.

EPA designated September 8, 2020 (the date of web posting of the proposed rule) as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach is to ensure that a person cannot defeat a SNUR by initiating a significant new use before the effective date of the final rule.

Persons who began commercial manufacture or processing of the chemical substances for a significant new use identified on or after that date will have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and EPA would have to take action under TSCA section 5 allowing manufacture or processing to proceed.

VIII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require development of any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, Order or consent agreement under TSCA section 4, then TSCA section 5(b)(1)(A) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, Order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. of the proposed rule lists potentially useful information for all SNURs listed here. Descriptions are provided for informational purposes. The potentially useful information identified in Unit IV. of the proposed rule will be useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use. Companies who are considering submitting a SNUN are encouraged, but not required, to develop the information on the substance, which may assist with EPA's analysis of the SNUN.

EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol election. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h). For more information on alternative test methods and strategies to reduce vertebrate animal testing, visit *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/alternative-test-methods-and-strategies-reduce.*

The potentially useful information described in Unit IV. of the proposed rule may not be the only means of providing information to evaluate the chemical substance associated with the significant new uses. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA sections 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

• Human exposure and environmental release that may result from the significant new use of the chemical substances.

IX. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 721.25. E–PMN software is available electronically at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca*.

X. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket for this rulemaking.

XI. Statutory and Executive Order Reviews

Additional information about these statutes and executive orders can be found at *https://www.epa.gov/laws-regulations-and-executive-orders*.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

This action establishes SNURs for new chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

According to PRA, 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

The listing of the OMB control numbers of the collection instruments and their subsequent codification in the table in 40 CFR 9.1 satisfies the display requirements of the PRA and OMB's implementing regulations at 5 CFR part 1320. Since this ICR was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table in 40 CFR part 9, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table in 40 CFR 9.1 without further notice and comment.

C. Regulatory Flexibility Act (RFA)

Pursuant to RFA section 605(b), 5 U.S.C. 601 *et seq.,* I hereby certify that promulgation of this SNUR would not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was seven in Federal fiscal year (FY) 2013, 13 in FY2014, six in FY2015, 12 in FY2016, 13 in FY2017, and 11 in FY2018. Only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $16,000 to $2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about $10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132: Federalism

This action will not have federalism implications because it is not expected to have a substantial direct effect on 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).

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action will not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes, significantly or uniquely affect the communities of Indian Tribal governments, and does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000), do not apply to this action.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

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

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.,* and EPA will submit a rule report containing this rule and other required information to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 7, 2021.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

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

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, amend the table by adding entries for §§ 721.11559 and 721.11560 in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.11559	2070–0012
721.11560	2070–0012
* * * * *	

* * * * *

PART 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

Subpart E—Significant New Uses for Specific Chemical Substances

■ 4. Add §§ 721.11559 and 721.11560 to subpart E to read as follows:

§ 721. 11559 9-Octadecenoic acid (Z)-, compd. with N-cyclohexylcyclohexanamine (1:1).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 9-Octadecenoic acid (Z)-, compd. with N-cyclohexylcyclohexanamine (1:1)(PMN P-16-538; CAS No. 22256-71-9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (o).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N = 4.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721. 11560 Bis[(hydroxyalkoxy)aryl]carbopolycyclic (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as bis[(hydroxyalkoxy)aryl]carbopolycyclic (PMN P-18-308) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

[FR Doc. 2021–20024 Filed 9–15–21; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 86, No. 177
Thursday, September 16, 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 HOMELAND SECURITY

6 CFR Part 37

[Docket No. DHS–2020–0028]

Notification of Document Availability and Reopening of Comment Period on Request for Information: Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes; Mobile Driver's Licenses

AGENCY: Office of Strategy, Policy, and Plans, Department of Homeland Security (DHS).

ACTION: Notification of document availability and reopening of comment period.

SUMMARY: The Department of Homeland Security (DHS) issued a Request for Information (RFI) entitled, ''Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes; Mobile Driver's Licenses'' in April 2021 that referenced a draft industry standard of the International Organization for Standardization (ISO) and International Electrotechnical Commission (IEC), ISO/IEC 18013–5. Through this document, DHS is announcing that the American National Standards Institute (ANSI) is making a view-only version of the draft industry standard available to the public. DHS is also announcing the reopening of the public comment period for the RFI for an additional 30 days to provide additional time for commenters to consider the draft industry standard. DHS will consider all comments received from April 19, 2021, through October 18, 2021.

DATES: The comment period for the RFI published at 86 FR 20320 (April 19, 2021) and extended at 86 FR 31987 (June 16, 2021) is reopened through October 18, 2021. To be considered by DHS, written comments and related material must be submitted on or before this date.

ADDRESSES: You may submit comments through the *Federal e-Rulemaking Portal at http://www.regulations.gov.* Use the Search bar to find the docket, using docket number DHS–2020–0028. See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: Steve Yonkers, Director, REAL ID Program, Office of Strategy, Policy, and Plans, United States Department of Homeland Security, Washington, DC 20528, *Steve.Yonkers@hq.dhs.gov,* (202) 447–3274, or George Petersen, Senior Program Manager, Enrollment Services and Vetting Programs, Transportation Security Administration, Springfield, VA 20598, *George.Petersen@tsa.dhs.gov,* (571) 227–2215. Please do not submit comments to these email addresses.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

DHS invites interested persons to comment on the RFI by submitting written comments, data, or views. See **ADDRESSES** above for information on where to submit comments. Except as stated below, all comments received may be posted without change to *http://www.regulations.gov,* including any personal information you have provided.

Commenter Instructions

DHS asks that each commenter include the identifying number of the specific question(s) to which they are responding. Each comment should also explain the commenter's interest in the RFI and how their comments should inform DHS's consideration of the relevant issues.

DHS asks that commenters provide as much information as possible, including any supporting research, evidence, or data. In some areas, DHS requests very specific information. Whenever possible, please provide citations and copies of any relevant studies or reports on which you rely, as well as any additional data which supports your comment. It is also helpful to explain the basis and reasoning underlying your comment. Although responses to all questions are preferable, DHS recognizes that providing detailed comments on every question could be burdensome and will consider all comments, regardless of whether the response is complete. For more information on the mDLs and the issues for which DHS solicits comments, please see the RFI.[1]

Handling of Confidential or Proprietary Information and SSI Submitted in Public Comments

Do not submit comments that include trade secrets, confidential business information, or sensitive security information [2] (SSI) to the public regulatory docket. Please submit such comments separately from other comments on the RFI. Commenters submitting this type of information should contact the individual in the **FOR FURTHER INFORMATION CONTACT** section for specific instructions.

DHS will not place comments containing SSI, confidential business information, or trade secrets in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. DHS will hold documents containing SSI, confidential business information, or trade secrets in a separate file to which the public does not have access and place a note in the public docket explaining that commenters have submitted such documents. DHS may include a redacted version of the comment in the public docket. If an individual requests to examine or copy information that is not in the public docket, DHS will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and DHS's FOIA regulation found in 6 CFR part 5.

Background

The REAL ID Act of 2005 [3] and the DHS implementing regulations [4] set minimum requirements for state-issued driver's licenses and identification cards accepted by Federal agencies for official

[1] 86 FR at 20325–26.

[2] ''Sensitive Security Information'' or ''SSI'' is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

[3] The REAL ID Act of 2005—Title II, Division B of the FY05 Emergency Supplemental Appropriations Act, Public Law 109–13 (119 Stat. 302; May 11, 2005), codified at 49 U.S.C. 30301 note, as amended.

[4] 6 CFR part 37 (REAL ID Driver's Licenses and Identification Cards).

purposes, which the Act defines as accessing Federal facilities, boarding federally regulated commercial aircraft, entering nuclear power plants, and any other purposes that the Secretary shall determine. The REAL ID Modernization Act, enacted in December 2020, clarifies that the REAL ID Act applies to mobile or digital driver's licenses that have been issued in accordance with regulations prescribed by the Secretary.[5] Beginning on May 3, 2023, Federal agencies may only accept driver's licenses and state-issued identification documents for official purposes that are REAL ID-compliant and issued by a REAL ID compliant state.[6]

On April 19, 2021, DHS published an RFI[7] to solicit comments from the public to help inform a potential rulemaking that would amend 6 CFR part 37 to set the minimum technical requirements and security standards for mDLs to enable Federal agencies to accept mDLs for official purposes under the REAL ID Act and regulation.[8] The RFI announced a comment period closing on June 18, 2021. On June 16, 2021, DHS announced a public meeting on the RFI on June 30, 2021, to provide an additional forum for comments by stakeholders and other interested persons regarding the issues identified in the RFI and extended the comment period until July 30, 2021.[9]

At the public meeting, several commenters suggested the importance of public access to the draft industry standard ISO/IEC 18013–5, which was referenced in the RFI.[10] To accommodate the public's interest in access to the draft standard, the American National Standards Institute (ANSI) informed DHS that it will make the final draft version of the standard, known as a Final Draft International Standard, or FDIS, available during the remainder of the reopened comment period.[11] See ''Document Availability'' below for instructions on accessing the standard.

Document Availability

ANSI, which is a private organization not affiliated with DHS, will provide public access to the final draft industry standard ISO/IEC 18013–5 until October 18, 2021. ANSI advises interested persons to visit the following website to obtain access: *https://www.surveymonkey.com/r/DQVJYMK.* This link will direct interested persons to a non-government website that is not within the Federal government's control and may not follow the same privacy, security, or accessibility polices as Federal government websites. ANSI requires individuals to complete an online license agreement form, which will ask for name, professional affiliation, and email address, before view-only access to the final draft standard will be granted. ANSI will provide access on a view-only basis, meaning copies of the document cannot be downloaded or modified. Individuals who access non-governmental sites to view this draft standard are subject to the policies of the owner of the website.

DHS continues to invite comments on any aspect of RFI through the reopened comment period and welcomes any additional comments and information that would promote an understanding of the broader implications of acceptance of mobile or digital driver's licenses by Federal agencies for official purposes. In addition to comments on the draft standard as discussed in detail in the RFI,[12] this request includes comments relating to the economic, privacy, security, environmental, energy, or federalism impacts that might result from a future rulemaking based on input received as a result of the RFI. DHS will consider all comments received from April 19, 2021, through October 18, 2021.

Robert Silvers,

Under Secretary Office of Strategy, Policy, and Plans United States Department of Homeland Security.

[FR Doc. 2021–19812 Filed 9–15–21; 8:45 am]

BILLING CODE 9110–9M–P

[5] REAL ID Modernization Act, Title X, Div. U of the Consolidated Appropriations Act, 2021, Public Law No. 116–260 (Dec. 27, 2020).

[6] *See* 6 CFR 37.5(b) and (c).

[7] *See* 86 FR 20320 (April 19, 2021).

[8] 86 FR 20320.

[9] 86 FR 31987 (June 16, 2021).

[10] 86 FR at 20322.

[11] ISO approved the standard on August 19, 2021, but it is not available until after publication later this year. DHS does not expect any material or substantive changes between this draft and the final published standard. *See www.iso.org/standard/69084.html.*

[12] 86 FR 20320 (April 19, 2021).

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1207

[Document Number AMS–SC–21–0032]

Amendments to the United States Potato Board Membership and Assessment Methods

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on amendments to the Potato Research and Promotion Plan (Plan) as recommended by the National Potato Promotion Board (Board) and the Secretary of the U.S. Department of Agriculture (USDA). The Board administers the Plan with oversight provided by USDA's Agricultural Marketing Service (AMS). The Board recommends changing approved sources of potato production data used to determine the number of Board seats, expanding payment methods used to remit assessments to include electronic submission, and updating the table of Harmonized Tariff Schedule of the United States (HTS) codes and assessment rates for imported potatoes and potato products. Finally, proposed amendments would insert new language eliminating the need to amend the Plan just to update the list of relevant HTS codes.

DATES: Comments must be received by October 18, 2021.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. All comments must be submitted through the Federal e-rulemaking portal at: *http://www.regulations.gov* and should reference the document number, date, and page number of this issue of the **Federal Register**. Comments submitted in response to this proposed rule will be included in the rulemaking record and will be made available to the public. Please be advised that the identity of individuals or entities submitting comments will be made public on the internet at: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Stacy Jones King, Marketing Specialist, Promotion and Economics Division, Specialty Crop Program, AMS, USDA, Stop 0244, 1400 Independence Avenue SW, Room 1406–S, Washington, DC 20250–0244; telephone: (202) 720–4140; or electronic mail: *Stacy.JonesKing@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal affecting the Plan (7 CFR part 1207) is authorized under the Potato Research and Promotion Act (Act) (7 U.S.C. 2611–2627).

Executive Orders 12866 and 13563

USDA is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. 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). Executive Order 13563 emphasizes the

importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

Executive Order 13175

This action has been reviewed in accordance with requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. AMS has assessed the impact of this proposed rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175. AMS hosts a quarterly teleconference with tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about proposed changes to regulations will be shared during an upcoming quarterly call, and tribal leaders will be informed about proposed revisions to the regulation and the opportunity to submit comments. AMS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided as needed with regards to this proposed change to the Plan.

Executive Order 12988

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 311 of the Act (7 U.S.C. 2620), a person subject to a plan may file a petition with USDA stating that such plan, any provision of such plan, or any obligation imposed in connection with such plan, is not in accordance with law and request a modification of such plan or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after date of the entry of USDA's final ruling.

Background

This proposed rule invites comments on proposed amendments to approved sources of potato production data used to determine the number of Board seats, to which each State is entitled. Additionally, amendments would expand payment methods used to remit assessments to include electronic submission and update the table of HTS codes and assessment rates for imported potatoes and potato products. Finally, proposed amendments would insert new language to avoid future amendments to the Plan in the event that HTS numbers subject to assessment reflected in the table are changed and such changes are merely replacements of previous numbers.

Data Sources for Board Membership Recommendation

The Plan became effective on March 9, 1972. Section 1207.320(b) of the Plan provides the formula used to determine how many Board member seats each State is entitled. Under the Plan, every State is eligible to have a Board representative and additional members based on potato production in that State. For each five million hundredweight of such production, or major fraction thereof, produced within each State, such State shall be entitled to one additional member.

The Plan states that total annual potato production must come from the ''latest Crop Production Annual Summary Report issued by the Crop Reporting Board, U.S. Department of Agriculture.'' *See* § 1207.320(b). The Crop Production Annual Summary Report is currently issued by NASS.

In March 2020, USDA's NASS and AMS communicated to the Board that NASS would no longer collect potato production data for the following ten states: Alaska, Illinois, Kansas, Maryland, Missouri, Montana, New Jersey, New York, North Carolina, and Virginia. In June 2020, NASS estimated the cost of collecting data at $80,000 per year. The Board considered this estimate and concluded that the cost to collect this information would exceed the value of assessments collected from the aforementioned ten States. Subsequently, the Board decided to temporarily freeze the number of seats for those ten States at their 2019 quantities so that the Board could move forward with assigning Board member seats for 2020 nominations.

At a July Board 2020 meeting, Board staff presented to the Board's Administrative Committee a summary of constraints related to the collection of production data. During a January 2021 meeting, Board staff further discussed the need to update the Plan with the Administrative Committee and made the recommendation to amend the Plan during a subsequent meeting on March 9, 2021.

The Board recommended to use production data from audited assessment reports in place of NASS data for states not included in NASS reports.

As indicated in Table 1, this amendment would allow the Board to use audited assessment data in instances where NASS data is unavailable.

TABLE 1—NASS PRODUCTION AND BOARD PRODUCTION (BOARD) AND NUMBER OF PRODUCER MEMBERS BY STATE

State	NASS 2016 (cwt)	NASS 2017 (cwt)	NASS 2018 (cwt)	Board 2018 (cwt)	2016–2018 NASS avg. (1,000 cwt)	2016–2018 NASS & Board Avg. (1,000 cwt)	2020 NASS number of members (cwt/5,000)	2020 NASS & Board number of members (cwt/5,000)
Alabama (AL)	.....	.....	.....	70	.....	.....	1	1
Illinois (IL)	2,812	3,321	2,850	394	2,994	2,176	1	1
Kansas (KS)	1,260	1,558	1,419	483	1,412	1,100	1	1
Maryland (MD)	.....	913	510	389	474	651	1	1
Missouri (MO)	2,410	2,423	1,665	1,012	2,166	1,948	1	1
Montana (MT)	3,685	3,774	3,830	149	3,763	2,536	1	1
New Jersey (NJ)	.....	600	530	125	377	363	1	1
New York (NY)	3,552	4,032	4,118	899	3,901	2,828	1	1
North Carolina (NC)	2,992	3,473	2,318	1,702	2,928	2,722	1	1
Virginia (VA)	1,189	1,193	1,034	450	1,139	944	1	1

Assessment Payment Options Recommendation

The Board also recommended to include ''electronic submission'' in the list of allowable methods of payment to remit assessments and to remove references to drafts and money orders.

The Board staff stated that allowing electronic submission (*e.g.,* bank transfer payments (Automated Clearing House) (ACH) or wire transfer payments) of assessments would improve and streamline operations by lowering the cost of processing mailed checks. The Board recommended removing references to drafts and money orders as handlers no longer use these forms of payment.

Harmonized Tariff Schedule Table Recommendation

Section 1207.510(b)(3) of the Plan contains a table that reflects outdated HTS codes, assessment rates, and potato categories for imports.

Pursuant to Section 1207.327(b) of the Plan, the Board has the authority to recommend to the Secretary amendments to this Plan. To reduce **Federal Register** publication costs associated with amending the Plan to update HTS codes, the Board recommended removing the HTS chart from the Plan and replacing the HTS chart with a reference to HTS codes, assessment rates and potato categories for imports.

The Secretary has chosen to adopt and propose an alternative approach that includes amending the Plan by updating the current HTS chart, and inserting new language to avoid future amendments to the Plan in the event that an HTS number subject to assessment reflected in the table is changed and such change is merely a replacement of a previous number. This proposed change will reduce future **Federal Register** publication costs associated with amending the Plan to remain consistent with future updated HTS numbers that have no impact on the description of potato involved.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of the proposed rule on small entities. Accordingly, AMS has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $1 million and small agricultural service firms (handlers) as those having annual receipts of no more than $30 million.

According to the Board, there were 60 importers, 955 handlers, and approximately 2,500 producers and handlers in 2020.

Most producers would be classified as small agricultural production businesses under the criteria established by the SBA (no more than $1 million in annual potato sales). According to the 2017 Census of Agriculture, published by NASS in 2019, there were 16,554 potato farms with bearing acreage. Of these 16,554 farms, 1,417 sold potatoes whose annual market value met or exceeded $1 million. Based on these figures, 91 percent of U.S. potato producers are considered to be ''small'' under the SBA standards. USDA recognizes the potential inclusion in its count of ''small'' farms those farms whose sales of potatoes were exactly $1 million in market value; however, USDA lacks the data to remedy this, and the number of farms who meet this criterion is likely quite small.

This proposal would amend §§ 1207.320, 1207.502, 1207.510 and 1207.513.

Regarding the economic impact of this proposed rule on affected entities, this action would impose no costs on producers, handlers, or importers. Proposed changes are administrative in nature and would allow the Board to effectively carry out the requirements of the Plan.

In response to the discontinuation of NASS collection of potato production data for 10 States, USDA considered the following alternatives to the proposed amendment: Take no action and hold constant production level figures for the 10 States to the final year for which NASS published data; or, fund NASS' collection of data for the 10 States using Board resources. The first of these alternatives would result in the potential for Board representation that is inconsistent with domestic production. Potato production fluctuates significantly from year to year. Consequently, distribution of Board member seats based on a fixed production figure would prevent the Board from adequately reflecting changes that occur in the industry over time; therefore, this is not a viable alternative. The second alternative would result in an annual cost to the Board of approximately $80,000 to restore the collection of potato production data by NASS for the 10 States which it has omitted. This amount exceeds the total value of assessments collected from these 10 States, making this alternative not viable.

In accordance with OMB regulation [5 CFR part 1320], which implements information collection requirements imposed by the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*], there are no new requirements contained in this rule.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services.

Regarding outreach efforts, all Board meetings were open to the public and interested persons were invited to participate and express their views. No concerns were raised.

We have performed this initial RFA regarding the impact of this proposed action on small entities and we invite comments concerning potential effects of this action on small businesses.

While this proposed rule as set forth below has not yet received the approval of USDA, it has been determined that it is consistent with and would effectuate the purposes of the Act.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this proposed rule will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1207

Advertising, Agricultural research, Imports, Potatoes, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 1207 is proposed to be amended as follows:

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

■ 1. The authority citation for 7 CFR part 1207 continues to read as follows:

Authority: 7 U.S.C. 2611–2627; 7 U.S.C. 7401.

■ 2. Revise § 1207.320(b) to read as follows:

§ 1207.320 Establishment and membership.

* * * * *

(b) Producer membership on the Board shall be determined on the basis of potato production reported in the latest Crop Production Annual Summary Report issued by the National Agricultural Statistics Service of the U.S. Department of Agriculture. If a State's potato production data is not provided by the National Agricultural Statistics Service, the Board may use an alternative data source that reliably reflects potato production in the United States. Unless the Secretary, upon recommendation of the Board, determines an alternate basis, for each five million hundredweight of such production, or major fraction thereof, produced within each State, such State shall be entitled to one member. However, each State shall initially be entitled to at least one member.

* * * * *

■ 3. Revise § 1207.502(a) to read as follows:

§ 1207.502 Determination of membership.

(a) Pursuant to § 1207.320 and the recommendation of the Board, annual producer memberships on the Board shall be determined on the basis of the average potato production during the 3 preceding years in each State as set forth in the Crop Production Annual Summary Reports issued by the National Agricultural Statistics Service of the U.S. Department of Agriculture. If a State's potato production data is not provided by the National Agricultural Statistics Service, the Board may use an alternative data source that reliably reflects potato production in the United States.

* * * * *

■ 4. Revise § 1207.510 (b)(3) to read as follows:

§ 1207.510 Levy of assessments.

* * * * *

(b) * * *

(3) The Harmonized Tariff Schedule (HTS) categories and assessment rates on imported tablestock potatoes and frozen or processed potatoes for ultimate consumption by humans and on imported seed potatoes are listed in the following table. In the event that any HTS number subject to assessment is changed and such change is merely a replacement of a previous number and has no impact on the description of the potatoes, assessments will continue to be collected based on these new numbers.

TABLE 2 TO PARAGRAPH (b)(3)

Tablestock potatoes, frozen or processed potatoes, and seed potatoes	Assessment	
	Cents/cwt	Cents/kg
0701.10.0020	3.0	0.066
0701.10.0040	3.0	0.066
0701.90.1000	3.0	0.066
0701.90.5015	3.0	0.066
0701.90.5025	3.0	0.066
0701.90.5035	3.0	0.066
0701.90.5045	3.0	0.066
0701.90.5055	3.0	0.066
0701.90.5065	3.0	0.066
0710.10.0000	6.0	0.132
2004.10.4000	6.0	0.132
2004.10.8020	6.0	0.132
2004.10.8040	6.0	0.132
2005.20.0070	4.716	0.104
0712.90.3000	21.429	0.472
1105.10.0000	21.429	0.472
1105.20.0000	21.429	0.472
2005.20.0040	21.429	0.472
2005.20.0020	12.240	0.27
1108.13.0010	27.0	0.595

* * * * *

■ 5. Revise § 1207.513 (c)(1) to read as follows:

§ 1207.513 Payment of assessments.

* * * * *

(c) *Payment directly to the Board.* (1) Except as provided in paragraphs (b) and (d) of this section, each designated handler or importer shall remit assessments directly to the Board by check or electronic payment. Checks are to be made payable to the National Potato Promotion Board or the Board's official doing business as name. Payment is due not later than 10 days after the end of the month such assessment is due together with a report (preferably on Board forms) thereon.

* * * * *

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2021–19676 Filed 9–15–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2021–BT–DET–0022]

RIN 1904–AF25

Energy Conservation Program: Proposed Determination of Air Cleaners as a Covered Consumer Product

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notification of proposed determination and request for comment.

SUMMARY: The U.S. Department of Energy (''DOE'') has tentatively

determined that air cleaners qualify as a covered product under Part A of Title III of the Energy Policy and Conservation Act (''EPCA''), as amended. DOE has tentatively determined that coverage of air cleaners is necessary and appropriate to carry out the purposes of EPCA, and that the average U.S. household energy use for air cleaners is likely to exceed 100 kilowatt-hours per year.

DATES: Written comments, data, and information are requested and will be accepted on or before November 15, 2021.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2021–BT–DET–0022, by any of the following methods:

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

2. *Email:* to *AirCleaners2021DET0022@ee.doe.gov.* Include docket number EERE–2021–BT–DET–0022 in the subject line of the message.

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section VI of this document.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, DOE has found it necessary to make temporary modifications to the comment submission process in light of the ongoing COVID–19 pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the COVID–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

Docket: The docket, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *www.regulations.gov/docket/EERE-2021-BT-DET-0022.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VI, ''Public Participation,'' for further information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Dr. Stephanie Johnson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1943. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Linda Field, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–3440. Email: *Linda.Field@hq.doe.gov.*

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Statutory Authority

EPCA [1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain consumer products, referred to generally as ''covered products.'' [3] In addition to specifying a list of consumer products that are covered products, EPCA contains provisions that enable the Secretary of Energy to classify additional types of consumer products as covered products. For a given consumer product to be classified as a covered product, the Secretary must determine that:

(1) Classifying the product as a covered product is necessary or appropriate to carry out the purposes of EPCA; and

(2) The average annual per-household [4] energy use by products of such type is likely to exceed 100 kilowatt-hours (''kWh'') (or its British thermal unit (''Btu'') equivalent) per year. (42 U.S.C. 6292(b)(1))

When attempting to cover additional consumer product types, DOE must first determine whether these criteria from 42 U.S.C. 6292(b)(1) are met. Once a determination is made, the Secretary may prescribe test procedures to measure the energy efficiency or energy use of such product. (42 U.S.C.

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[3] The enumerated list of covered products is at 42 U.S.C. 6292(a)(1)–(19).

[4] DOE has defined ''household'' to mean an entity consisting of either an individual, a family, or a group of unrelated individuals, who reside in a particular housing unit. For the purpose of this definition:

(1) *Group quarters* means living quarters that are occupied by an institutional group of 10 or more unrelated persons, such as a nursing home, military barracks, halfway house, college dormitory, fraternity or sorority house, convent, shelter, jail or correctional institution.

(2) *Housing unit* means a house, an apartment, a group of rooms, or a single room occupied as separate living quarters, but does not include group quarters.

(3) *Separate living quarters* means living quarters:

(i) To which the occupants have access either:

(A) Directly from outside of the building, or

(B) Through a common hall that is accessible to other living quarters and that does not go through someone else's living quarters, and

(ii) Occupied by one or more persons who live and eat separately from occupant(s) of other living quarters, if any, in the same building. 10 CFR 430.2.

6293(a)(1)(B)) Furthermore, once a product is determined to be a covered product, the Secretary may set standards for such product, subject to the provisions in 42 U.S.C. 6295(o) and (p), provided that DOE determines that four additional criteria at 42 U.S.C. 6295(*l*) have been met. Specifically, 42 U.S.C. 6295(*l*) requires the Secretary to determine that:

(1) The average household energy use of the products has exceeded 150 kWh per household for a 12-month period;

(2) The aggregate 12-month energy use of the products has exceeded 4200 gigawatt-hours;

(3) Substantial improvement in energy efficiency of products of such type is technologically feasible; and

(4) Application of a labeling rule under 42 U.S.C. 6294 is unlikely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) that achieve the maximum energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(*l*)(1))

II. Current Rulemaking Process

DOE has not previously conducted a rulemaking for air cleaners. If, after public comment, DOE issues a final determination of coverage for this product, DOE may prescribe both test procedures and energy conservation standards for this product. DOE will publish a final decision on coverage as a separate notice, an action that will be completed prior to the initiation of any test procedure or energy conservation standards rulemaking. 10 CFR part 430 subpart C appendix A section 5(c). If DOE determines that coverage is warranted, DOE will proceed with its typical rulemaking process for both test procedures and standards. *Id.* DOE is not proposing test procedures or energy conservation standards as part of this proposed determination. If DOE proceeds with a rulemaking to establish energy conservation standards, DOE would determine if air cleaners satisfy the provisions of 42 U.S.C. 6295(*l*)(1) during the course of that rulemaking.

III. Scope of Coverage

Air cleaners are products that remove, destroy, or deactivate particulate matter and other contaminants from the air to improve indoor air quality. A wide range of consumer air cleaner products are available on the market, including tabletop units, units sized for single rooms or multiple rooms, and whole-home units integrated into a central heating and cooling system. Air cleaners employ a wide variety of technologies to remove particulate matter and other contaminants from the air, and may also provide air circulation or humidification, and other forms of indoor air quality improvement.

To help inform its proposed scope of coverage, DOE utilized existing classifications of air cleaners developed by the Association of Home Appliance Manufacturers (''AHAM'')—the industry trade group for air cleaners—and the U.S. Environmental Protection Agency's (''EPA's'') ENERGY STAR® program, as well as additional market research conducted by DOE. The following paragraphs discuss DOE's considerations from these sources and present the proposed definition that would provide the basis for coverage of air cleaners under EPCA.

AHAM publishes a standard method of test, certified by American National Standards Institute (''ANSI''), for measuring the performance of portable household electric room air cleaners, titled ANSI/AHAM AC–1–2020 *Portable Household Electric Room Air Cleaners* (''ANSI/AHAM AC–1–2020'').[5] AHAM describes this standard as establishing a uniform, repeatable procedure or standard method for measuring specified product characteristics of household portable air cleaners. The standard methods provide a means to compare and evaluate different brands and models of household portable air cleaners on the basis of characteristics significant to product use. Section 3.1 of ANSI/AHAM AC–1–2020 defines ''Portable Household Electric Room Air Cleaner ('Air Cleaner')'' as ''[a]n electric appliance with the function of removing particulate matter from the air and which can be moved from room to room. Hereinafter referred to as 'air cleaner'.'' In addition, Sections 3.1.1 through 3.1.6 of ANSI/AHAM AC–1–2020 define the following installation configurations of air cleaners:

(1) *Air Cleaner—Floor Type:* Floor type air cleaners are designed to stand alone on the floor of a room and are designated as stand-alone floor models by the manufacturer. Appliances of this type are tested on the floor facing the test window as close to the center of the test chamber as possible.

(2) *Air Cleaner—Table Type:* Table type air cleaners are designed to set on a table or counter by the manufacturer. Appliances of this type are tested on the table stand facing the test window at the center of the test chamber.

(3) *Air Cleaner—Wall Type:* Wall type air cleaners are designed either to attach to a wall and are designated as wall mountable by the manufacturer or as a plug-in air cleaner. A wall type air cleaner must include appropriate wall mounting brackets or specifically designated instructions to mount the air cleaner integrally to the wall (*i.e.,* not a shelf). Appliances of this type are tested on the wall mount stand facing the test window placed at the center of the test chamber.

(4) *Air Cleaner—Combination Type:* Combination type air cleaners are designed to operate in one or more orientations/positions (floor, table, wall) as designed by the manufacturer. A combination type air cleaner may be tested at the center of the test chamber facing the test window on the floor, table, or wall mount stand, according to how it has been designated by the manufacturer.

(5) *Air Cleaner—Ceiling Type:* Air cleaner appliances designed to be mounted on the ceiling are considered outside the scope of this method. Uniform testing practices and statistical examination of such appliances have not been conducted.

(6) *Air Cleaner—Plug-In Type:* A fixed location air cleaner directly connected to an electric receptacle (outlet) by means of direct plug-in (no electric cord). Appliances of this type are tested at the lower level electrical receptacle of the plug-in type test stand facing the test window.

In addition, Section 3.2 of ANSI/AHAM AC–1–2020 defines the following specific design characteristics of portable household electric room air cleaners:

(1) *Fan with Filter:* Air cleaners that operate with an electrical source of power and which contain a motor and fan for drawing air through a filter media.

(2) *Fan with Electrostatic Plates:* Air cleaners that operate with a fan and incorporate electrically charged plates or wires to electrostatically collect particulate matter. Such devices may include filter(s).

(3) *Fan Filter with Ion Generator:* Air cleaners that incorporate an ion generator in addition to a fan and filter.

(4) *Ion Generator:* Air cleaners that incorporate an ion generator only.

(5) *Hybrid:* An air cleaner employing a combination of the above definitions of fan with filter, electrostatic plate/wire, and ion generator.

(6) *Other Types:* A device that has the stated capability to reduce the concentration of particulate matter in a room. Such devices do not have to contain a fan and can incorporate any of the particle removal methods previously noted.

[5] ANSI/AHAM AC–1–2020 available at AHAM website at *www.aham.org/itemdetail?iproductcode=30002&category=padstd.*

The ENERGY STAR program provides qualification criteria for room air cleaners (also referred to as air purifiers).[6] On its web page, ENERGY STAR describes room air cleaners as portable, electric appliances that remove fine particles, such as dust and pollen, from indoor air. The current ENERGY STAR Product Specification [7] defines ''room air cleaner'' as ''an electric appliance with the function of removing particulate matter from the air and which can be moved from room to room,'' consistent with ANSI/AHAM AC–1–2020.

The definitions in both ANSI/AHAM AC–1–2020 and the ENERGY STAR Product Specification include specific air cleaning and air purifying designs and technologies, but state that they cover only ''portable'' air cleaners that ''can be moved from room to room.'' DOE notes that while ANSI/AHAM AC–1–2020 specifies coverage of portable air cleaners, it includes air cleaners that include appropriate wall mounting brackets or specifically designated instructions to mount the air cleaner integrally to the wall. In order to cover a more comprehensive range of the consumer market for air cleaning and purification, an expanded definition of a consumer air cleaner may be appropriate. DOE has therefore considered a modified definition that would include ''non-portable'' air cleaners, such as those that are mounted on walls and ceilings, or that provide whole-home air cleaning in conjunction with central heating or air conditioning systems. The proposed definition also includes technologies that clean the air by destroying or deactivating contaminants, including microbes as well as particulates, from the air (instead of only removing them).

DOE is also proposing to exclude from coverage those consumer products which purify air solely by means of ultraviolet (''UV'') light without circulating air through the product by means of a fan. The energy-consuming component of such products would be a fluorescent lamp or light-emitting diode that emits light in the UV portion of the electromagnetic spectrum. Accordingly, DOE would classify these products as a type of lamp under EPCA (See the definition of ''lamps primarily designed to produce radiation in the ultraviolet region of the spectrum'' and ''light-emitting diode or LED'' in 10 CFR 430.2), and therefore, is not considering coverage for these products as a consumer air cleaner.

DOE additionally proposes to make clear that a product that meets the definition of a central air conditioners, room air conditioners, portable air conditioners, dehumidifiers, and furnaces as defined in 10 CFR 430.2 is not included in the proposed definition of air cleaner. Although these products may eliminate certain particulates from the air by means of filters or through collection and removal of condensate containing the particulates, DOE is proposing to exclude them. (See the definitions for ''central air conditioner,'' ''room air conditioner,'' ''portable air conditioner,'' ''dehumidifier,'' and ''furnace'' in 10 CFR 430.2.)

For the purpose of this analysis, DOE evaluated air cleaners, which DOE defined as a consumer product that:

(1) Is a self-contained, mechanically encased assembly;

(2) Is powered by single-phase electric current;

(3) Removes, destroys, or deactivates particulates and microorganisms from the air;

(4) Excludes products that destroy or deactivate particulates and microorganisms solely by means of ultraviolet light without a fan for air circulation; and

(5) Excludes central air conditioners, room air conditioners, portable air conditioners, dehumidifiers, and furnaces as defined in 10 CFR 430.2.

DOE proposes to adopt this definition to inform stakeholders while DOE continues its analysis. The proposed definition considers the air cleaning and air purification function of the product that is described in ANSI/AHAM AC–1–2020, the current ENERGY STAR Version 2.0 Product Specification for consumer room air cleaners, and the wide variety of air cleaning and air purifying consumer products currently on the market.

As stated, EPCA authorizes DOE to classify a type of consumer product as a covered product upon making certain determinations. EPCA defines a ''consumer product'' as any article (other than an automobile) of a type—(A) which in operation consumes, or is designed to consume energy; and (B) which, to any significant extent, is distributed in commerce for personal use or consumption by individuals; without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual. (42 U.S.C. 6291(a)(1)) As such, in considering the potential scope of coverage, DOE does not consider whether an individual product is distributed in commerce for residential or commercial use, but whether it is *of a type* of product distributed in commerce for residential use.

DOE seeks feedback from interested parties on its proposed definition and scope of coverage of air cleaners.

IV. Evaluation of Air Cleaners as a Covered Product Subject to Energy Conservation Standards

The following sections describe DOE's preliminary evaluation of whether air cleaners fulfill the criteria for being added as a covered product pursuant to 42 U.S.C. 6292(b)(1). As stated previously, DOE may classify a consumer product as a covered product if:

(1) Classifying products of such type as covered products is necessary or appropriate to carry out the purposes of EPCA; and

(2) The average annual per-household energy use by products of such type is likely to exceed 100 kWh (or its Btu equivalent) per year.

A. Coverage Necessary or Appropriate To Carry Out Purposes of EPCA

DOE has preliminarily determined that coverage of air cleaners is necessary or appropriate to carry out the purposes of EPCA, which include:

(1) To conserve energy supplies through energy conservation programs, and, where necessary, the regulation of certain energy uses; and

(2) To provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products. (42 U.S.C. 6291(4)–(5))

Although air cleaners are not currently subject to energy conservation standards under EPCA, as discussed, the ENERGY STAR program has developed qualifying specifications for room air cleaners, starting with the Version 1.0 specification that became effective July 1, 2004. The current specification, Version 2.0 Rev. April 2021, became effective October 17, 2020. During the process of developing the Version 1.0 specification, EPA cited shipments data from AHAM showing 1.65 million units shipped in 2000, and estimated that shipments would grow to 2.02 million units in 2010 with an installed base of 15 million units.[8] EPA reported that shipments of ENERGY STAR-qualified room air cleaners in 2019 were 2.224 million units, with an estimated market

[6] See ENERGY STAR website for air purifiers (cleaners) at *www.energystar.gov/products/air_purifiers_cleaners.*

[7] See Eligibility Criteria Version 2.0, Rev. April 2021, available at *www.energystar.gov/sites/default/files/ENERGY%20STAR%20Version%202.0%20Room%20Air%20Cleaners%20Specification_Rev%20April%202021_with%20Partner%20Commitments.pdf.*

[8] *ENERGY STAR & Air Cleaners.* January 14, 2003. Andrew Fanara, EPA. Available online at: *www.energystar.gov/sites/default/files/specs//private/AirCleanersatIHS-Presentation-Final.ppt.*

penetration of 43 percent, indicating overall shipments of air cleaners were 5.17 million units.[9] Based on EPA's definition of room air cleaner, these shipments and installed base estimates comprise only portable configurations of air cleaners. Nevertheless, the ratings contained in the ENERGY STAR database of certified room air cleaners [10] demonstrate significant variation in the total energy consumption among different models currently available, suggesting that technologies exist to reduce the energy consumption of air cleaners.

DOE requests data and information regarding current annual shipments of air cleaners and the installed base of air cleaners, specifying the scope of products included in any such estimates (*e.g.,* portable, non-portable (wall-mounted, ceiling-mounted, whole-home), *etc.*)

DOE requests comment on the availability or lack of availability of technologies for improving energy efficiency of air cleaners.

B. Average Household Energy Use

DOE estimated the average household energy use for air cleaners, in households that use the product, using power consumption data reported in the ENERGY STAR product database. The ENERGY STAR database is the only publicly available source, of which DOE is aware, that provides energy consumption data for air cleaners. For each model, the database lists the annual energy use in kilowatt-hours per year (''kWh/yr''), along with other relevant performance metrics, as measured according to ANSI/AHAM AC–1–2020. The reported annual energy consumption ranges from 123 kWh/year to 770 kWh/year, with an average annual energy consumption of 299 kWh/year among all models in the ENERGY STAR database. The energy consumption of non-ENERGY STAR-qualified models, comprising 57 percent of shipments in 2019 as discussed in section IV.A of this document, is likely to be higher. The ENERGY STAR program estimates that the standard (*i.e.,* non-ENERGY STAR qualified) consumer air cleaner operating continuously uses around 550 kWh/year.[11]

Although the ENERGY STAR program covers only portable configurations of air cleaners, the similarity in fundamental design and operation (*i.e.,* a fan or other means for air circulation and a means for of removing, destroying, or deactivating particulates and microorganisms from the air) of non-portable products (*e.g.,* wall-mounted, ceiling-mounted, whole-home units) suggests that non-portable air cleaners are likely to have similar or higher energy consumption as compared to portable air cleaners.

Based on this analysis, DOE tentatively determines that the average annual per-household energy use for air cleaners is very likely to exceed 100 kWh/year, satisfying the provisions of 42 U.S.C. 6292(b)(1).

DOE requests data and information regarding annual energy use estimates for air cleaners, particularly for products not covered by the ENERGY STAR program, such as non-portable products (wall-mounted, ceiling-mounted, and whole-home units).

C. Preliminary Determination

Based on the foregoing, DOE has tentatively determined that classifying air cleaners, as proposed to be defined in this document, is necessary and appropriate to carry out the purposes of EPCA; and the average annual per-household energy use by air cleaners is likely to exceed 100 kWh (or its Btu equivalent) per year. As such, DOE has preliminarily determined to classify air cleaners as a covered product under Part A of Title III of EPCA, as amended.

DOE requests comment on whether classifying air cleaners as a covered product is necessary or appropriate to carry out the purposes of EPCA.

V. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

This proposed determination has been determined to be not significant for purposes of Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). As a result, the Office of Management and Budget (''OMB'') did not review this proposed determination.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impact of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*www.energy.gov/gc/office-assistant-general-counsel-legislation-regulation-and-energy-efficiency*).

This proposed determination would not establish test procedures or energy conservation standards for air cleaners. If adopted, the proposed determination would only positively determine that future standards may be warranted and should be explored in an energy conservation standards and test procedure rulemaking. Economic impacts on small entities would be considered in the context of such rulemakings. Therefore, DOE initially concludes that the impacts of the proposed determination would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of an IRFA is not warranted. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

Manufacturers of covered products must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response,

[9] *ENERGY STAR® Unit Shipment and Market Penetration Report: Calendar Year 2019 Summary.* Available online at: *www.energystar.gov/sites/default/files/asset/document/2019%20Unit%20Shipment%20Data%20Summary%20Report.pdf.*

[10] ENERGY STAR Certified Room Air Cleaners Database. Accessed June 24, 2021. Available online at *www.energystar.gov/productfinder/product/certified-room-air-cleaners/.*

[11] *Air Purifiers (Cleaners).* Accessed June 28, 2021. Available online at: *www.energystar.gov/products/air_purifiers_cleaners.*

including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. As noted previously, this proposed determination, if made final, would not establish any testing requirements or energy conservation standards for air cleaners.

D. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act (''NEPA'') and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings that are strictly procedural. 10 CFR part 1021, subpart D, appendix A6. DOE anticipates that this rulemaking qualifies for categorical exclusion A6 because it is a strictly procedural rulemaking and otherwise meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final rule.

E. Review Under Executive Order 13132

E.O. 13132, ''Federalism'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on federal agencies formulating and implementing policies or regulations that preempt state law or that have Federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed determination and had tentatively determined that it would not have a substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed determination. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by E.O. 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any, to be given to the law (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct, (4) specifies the retroactive effect, if any, to be given to the law, (5) defines key terms, either explicitly or by reference to other statues that explicitly define those terms, and (6) addresses other important issues affecting clarity and general draftsmanship of legislation under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of those standards. DOE completed the required review and determined that, to the extent permitted by law, this proposed determination meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

DOE examined this proposed determination according to UMRA and its statement of policy and determined that the proposed determination does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

H. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed determination would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (Mar. 15, 1988), DOE has determined that this proposed determination would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act of 2001

Section 515 of the Treasury and General Government Appropriation Act,

2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this NOPD under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (''OIRA'') at OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under E.O. 12866, or any successor Executive order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This proposed regulatory action to classify air cleaners as covered products is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator of OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Information Quality

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (''OSTP''), issued its Final Information Quality Bulletin for Peer Review (''the Bulletin''). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. DOE has determined that the analyses conducted for this rulemaking do not constitute ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' 70 FR 2667 (Jan. 14, 2005). The analyses were subject to pre-dissemination review prior to issuance of this rulemaking.

VI. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this notification of proposed determination no later than the date provided at the **DATES** section at the beginning of this document. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit information to *www.regulations.gov* for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Anyone submitting comments through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. With this instruction followed, the cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. Facsimile submissions will not be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

B. Issues on Which DOE Seeks Comments

DOE welcomes comments on all aspects of this proposed determination. DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

- Proposed definition and scope of coverage of air cleaners;
- Data and information regarding current annual shipments of air cleaners and the installed base of air cleaners, specifying the scope of products included in any such estimates (*e.g.,* portable, non-portable (wall-mounted, ceiling-mounted, whole-home), *etc.*);
- Availability or lack of availability of technologies for improving energy efficiency of air cleaners.
- Data and information regarding annual energy use estimates for air cleaners, particularly for products not covered by the ENERGY STAR program, such as non-portable products (wall-mounted, ceiling-mounted, and whole-home units); and
- Whether classifying air cleaners as a covered product is necessary or appropriate to carry out the purposes of EPCA.

DOE is interested in receiving views concerning other relevant issues that participants believe would affect its ability to establish test procedures and energy conservation standards for air cleaners.

After the expiration of the period for submitting written statements, DOE will consider all comments and additional information that is obtained from interested parties or through further analyses, and it will prepare a final determination.

VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notification of proposed determination.

Signing Authority

This document of the Department of Energy was signed on September 10, 2021, by Kelly Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on September 10, 2021

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2021–19950 Filed 9–15–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–1006; Project Identifier 2019–CE–047–AD]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 78–02–03, which applies to all Piper Aircraft, Inc. (Piper), Model PA–23–250 airplanes. AD 78–02–03 requires repetitively inspecting the stabilator tip tube and weight assemblies for cracks, inspecting for missing rivets and screws, replacing the forward rib/horn assemblies, and reinforcing the mounting. Since AD 78–02–03 was issued, Piper developed a newly-designed stabilator, which is not subject to the unsafe condition, and revised its service information. This proposed AD would retain the actions of AD 78–02–03, but would reduce the applicability and require the actions in the revised service information. 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 Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, FL 32960; phone: (772) 299–2141; website: *https://www.piper.com/.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–1006; 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: John Marshall, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5524; fax: (404) 474–5605; email: *john.r.marshall@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 Number FAA–2020–1006; Project

Identifier 2019–CE–047–AD'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend 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 John Marshall, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 78–02–03 [Reg. Docket No. 77–EA–81, Amendment 39–3128] (43 FR 3079, January 23, 1978) (AD 78–02–03), for all Piper Model PA–23–250 airplanes. AD 78–02–03 was prompted by cracks found on the stabilator structure during routine inspections, including cracks in the tip balance weight, abnormal trim tab horn bushing wear, and skin and nose rib cracks. The FAA issued AD 78–02–03 to prevent weakening of the stabilator structure and loss of the trim tab and counter balance weight, which could result in reduced airplane control.

For all Model PA–23–250 airplanes, AD 78–02–03 requires repetitively inspecting both the stabilator tip tube and the weight assemblies for cracks, with follow-on alterations or replacements as necessary, in accordance with Piper Service Bulletin (SB) No. 540, dated January 4, 1977 (Piper SB 540). For different groups of serial-numbered airplanes, AD 78–02–03 requires a one-time inspection of the stabilator tip ribs for missing rivets and missing tube and weight assembly attachment screws with alteration as necessary, replacement of the right and left stabilator tab forward inboard rib/horn assemblies, and/or reinforcement of the mounting of the stabilator tube and weight assemblies. The repetitive inspections in AD 78–02–03 for all serial-numbered airplanes have no terminating action and are required regardless of any corrective actions performed.

Actions Since AD 78–02–03 Was Issued

Since the FAA issued AD 78–02–03, Piper changed the design of the stabilator structure. Airplanes beginning with serial number 27–7954122 were manufactured with the stabilator design change and are not subject to the unsafe condition addressed by AD 78–02–03. The FAA determined the applicability of AD 78–02–03 should be revised to exclude those later-manufactured airplanes.

In addition, Piper revised SB 540, the service bulletin required by AD 78–02–03 for the repetitive inspections of the stabilator tip tube and the weight assemblies. Piper SB 540B, dated February 9, 2021 (Piper SB 540B), reduces the applicability of the affected serial numbers and contains separate instructions for inspecting and repairing airplanes with a modified tube and weight assembly or with a stabilizer balance weight replacement kit part number (P/N) 763 987.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following service documents proposed for compliance with this NPRM:

- Piper SB No. 547, dated March 1, 1977, which contains instructions for inspecting the stabilator tip rib;
- Piper SB No. 569, dated August 24, 1977, which contains information for replacing the stabilator tab horn;
- Piper Service Letter No. 807A, dated September 8, 1977, which contains information for installing the stabilator outboard nose rib; and
- Piper SB No. 540B, February 9, 2021, which contains instructions for inspecting the stabilator tip tube and weight assembly and addressing any cracks found.

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**.

Other Related Service Information

The FAA reviewed the following documents for information related to this NPRM:

- Piper SB 540, which contains instructions for inspecting and reinforcing the stabilator tip tube and weight assembly; and
- Piper Aztec Service Manual, Part Number 753–564, dated January 1, 2009. Paragraphs 4–65 through 4–67 of this manual contain procedures for checking control surface balance.

FAA's Determination

The FAA is issuing this NPRM after determining the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain all of the requirements of AD 78–02–03 but would reduce the applicability and update some of the service information that would be required for compliance.

Differences Between This Proposed AD and the Service Information

Piper SB 540B specifies contacting Piper for repair instructions. This proposed AD would require contacting the FAA for an approved repair method instead.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 625 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect the stabilator tip tube and weight assembly.	0.5 work-hour × $85 per hour = $42.50.	Not applicable	$42.50 per inspection cycle.	$26,562.50 per inspection cycle.
Inspect the stabilator tip ribs.	0.5 work-hour × $85 per hour = $42.50.	Not applicable	$42.50	$26,562.50.
Replace the stabilator tab forward rib/horn assemblies.	4 work-hours × $85 per hour = $340.	$817	$1,157	$723,125.
Install additional nose ribs	1 work-hour × $85 per hour = $85.	$367	$452	$282,500.

The FAA estimates the following costs to do any necessary repairs or replacements that would be required based on the results of the proposed inspection. The FAA has no way of determining the number of airplanes that might need these repairs or replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair stabilator tip tube and weight assemblies (airplanes without kit P/N 763 987).	4 work-hours × $85 per hour = $340	$80	$420
Install missing stabilator tip rib rivets and/or the stabilator tip tube and weight assembly attachment screws.	1 work hour × $85 per hour = $85	39	124
Balance stabilator	5 work-hours × $85 per hour = $425	Not applicable	425

For airplanes with kit P/N 763 987, the cost to repair cracking may vary significantly from airplane to airplane, and therefore the FAA has no way of determining an estimated cost.

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 has 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:

■ a. Removing Airworthiness Directive 78–02–03 [Reg. Docket No. 77–EA–81, Amendment 39–3128] (43 FR 3079, January 23, 1978); and

■ b. Adding the following new airworthiness directive:

Piper Aircraft, Inc.: Docket No. FAA–2020–1006; Project Identifier 2019–CE–047–AD.

(a) Comments Due Date

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

(b) Affected ADs

This AD replaces AD 78–02–03 [Reg. Docket No. 77–EA–81, Amendment 39–3128] (43 FR 3079, January 23, 1978) (AD 78–02–03).

(c) Applicability

This AD applies to Piper Aircraft, Inc., Model PA–23–250 airplanes, serial numbers 27–7654001 through 27–7954121, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 5510, Horizontal Stabilizer Structure.

(e) Unsafe Condition

This AD was prompted by reports of cracks developing on the stabilator structure. The FAA is issuing this AD to prevent weakening of the stabilator structure and to detect and correct cracks on the stabilator tip tube and

weight assembly. The unsafe condition, if not addressed, could cause weakening of the complete structure and lead to loss of the trim tab and counter balance weight, which may result in reduced airplane control.

(f) Compliance

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

(g) Previously Required Actions Retained From AD 78–02–03

(1) Within 50 hours time-in-service (TIS) after January 26, 1978 (the effective date of AD 78–02–03), do the following inspections and modifications.

(i) For airplanes with serial numbers 27–7654001 through 27–7754054, inspect both stabilator tip ribs for missing rivets and missing tube and weight assembly attachment screws and if necessary alter in accordance with Piper Service Bulletin (SB) 547, dated March 1, 1977.

(ii) For airplanes with serial numbers 27–7654001 through 27–7754127, 27–7754130, 27–7754131, 27–7754133 through 27–7754136, and 27–7754138 through 27–7754144, replace the right and left stabilator tab forward inboard rib/horn assemblies by installing Piper Kit 761 143 or equivalent kit in accordance with Piper SB 569, dated August 24, 1977.

(iii) For airplanes with serial numbers 27–7654001 through 27–7754041 equipped with stabilators Piper part number (P/N) 15658–2, 15658–3, 15658–22 or 15658–23, reinforce the mounting of the stabilator tube and weight assemblies by installing additional nose-ribs with Piper Kit 761 141 or equivalent kit in accordance with Piper Service Letter 807A, dated September 8, 1977.

(2) Before further flight after completing the alterations in paragraphs (g)(1)(ii) and (iii) of this AD, balance the stabilator.

(h) Inspection of Stabilator Tip Tube and Weight Assembly

Within 10 hours TIS after the effective date of this AD or within 100 hours TIS after completing the last inspection required by paragraph (a) of AD 78–02–03, whichever occurs later, and thereafter at intervals not to exceed 100 hours TIS, inspect the left and right stabilator balance weight assemblies for cracks and complete any necessary repairs by following Parts I and II of the Instructions in Piper SB No. 540B, dated February 9, 2021, except you are not required to contact Piper for repair instructions. Instead, repair in accordance with FAA-approved procedures.

(i) Credit for Previous Actions

You may take credit for the initial inspection and corrective actions required by paragraph (h) of this AD if you performed those actions before the effective date of this AD using Piper SB No. 540, dated January 4, 1977, or SB No. 540A, dated October 20, 1980.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(3) For service information that contains steps that are labeled as Required for Compliance (RC), the following provisions apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled 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 RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

(1) For more information about this AD, contact John Marshall, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5524; fax: (404) 474–5605; email: *john.r.marshall@faa.gov.*

(2) For service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, FL 32960; phone: (772) 299–2141; website: *https://www.piper.com/.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued on September 9, 2021.

Ross Landes,

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

[FR Doc. 2021–19959 Filed 9–15–21; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1634

[Docket No. CPSC–2008–0005]

Standard for the Flammability of Residential Upholstered Furniture

AGENCY: Consumer Product Safety Commission.

ACTION: Termination of rulemaking.

SUMMARY: The Consumer Product Safety Commission is withdrawing its proposed rule on flammability standards for residential upholstered furniture that published March 4, 2008 in the **Federal Register**. This rulemaking is no longer active because it has been superseded by the COVID–19 Regulatory Relief and Work From Home Safety Act.

DATES: As of September 16, 2021 the proposed rule publish March 4, 2008 at 73 FR 11701 is withdrawn.

ADDRESSES: National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Andrew Lock, Project Manager, Directorate for Laboratory Sciences, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850; telephone: 301–987–2099; email: *alock@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Upholstered Furniture Rulemaking Under the FFA

1. *Advance Notice of Proposed Rulemaking.* In 1993, the National Association of State Fire Marshals (NASFM) petitioned the Commission to issue regulations under the FFA addressing upholstered furniture fire risks. On June 15, 1994, the Commission granted the petition, in part, and issued an advance notice of proposed rulemaking (ANPR) on the specific risk of small, open flame-ignited fires. 59 FR 30735. The Commission denied the petition regarding large, open flame-ignited fires, and deferred action on the petition for cigarette-ignited fires. On October 23, 2003, the Commission published a subsequent ANPR, expanding the upholstered furniture proceeding to address ignition of upholstered furniture by small open flames and smoldering cigarettes. 68 FR 60629.

2. *Notice of Proposed Rulemaking.* On March 4, 2008, the Commission issued a notice of proposed rulemaking (2008 NPR) for a flammability standard for residential upholstered furniture under the FFA. 73 FR 11702. The 2008 NPR proposed performance requirements to reduce the likelihood of upholstered furniture fires ignited by cigarettes or small open flames. Manufacturers and importers of upholstered furniture could choose one of two possible methods for compliance: (1) Use upholstery cover material that met the specified cigarette-ignition performance test, *i.e.,* ''Type I'' furniture; or (2) incorporate an interior fire barrier between the cover fabric and interior filling materials that met both the smoldering and small open-flame resistance tests, *i.e.,* ''Type II'' furniture. An ''interior fire barrier'' was defined as a fire-resistant material that is

interposed between the upholstery cover fabric and any interior filling material. The 2008 NPR on upholstered furniture flammability focused on performance standards which did not prescribe requirements for filling materials or require manufacturers or importers to use FR chemical additives to achieve compliance.

B. The COVID–19 Act

On December 27, 2020, the ''COVID–19 Regulatory Relief and Work From Home Safety Act,'' became law. Public Law 116–260. Section 2101(c) of the COVID–19 Act mandated that, 180 days after the date of enactment of the COVID–19 Act, the standard for upholstered furniture set forth by the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation of the Department of Consumer Affairs of the State of California in Technical Bulletin (TB) 117–2013 (TB 117–2013), entitled, ''Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture,'' published June 2013, ''shall be considered to be a flammability standard promulgated by the Consumer Product Safety Commission under section 4 of the Flammable Fabrics Act (15 U.S.C. 1193).''

Thus, under the COVID–19 Act, the California standard, TB 117–2013, is a federal flammability standard promulgated under section 4 of the FFA. TB 117–2013 sets forth the requirements, test procedure, and apparatus for testing the smolder resistance of materials used in upholstered furniture from hazards associated with smoldering ignition. The standard provides methods for smolder resistance of cover fabrics, barrier materials, resilient filling materials, and decking materials for use in upholstered furniture. The COVID–19 Act and the FFA (15 U.S.C. 1191 *et seq.*) does not preempt or otherwise affect any State or local law, regulation, code, standard, or requirement that concerns health risks associated with upholstered furniture; and is not designed to protect against the risk of occurrence of fire, or to slow or prevent the spread of fire, with respect to upholstered furniture. In addition, sections 1374 through 1374.3 of title 4, California Code of Regulations (except for subsections (b) and (c) of section 1374 of that title), as in effect on the date of enactment of the COVID–19 Act are not preempted. Finally, the California standard may not be preempted.

On April 9, 2021, the Commission published a direct final rule that codified the relevant statutory text of section 2101 of the COVID–19 Act under 16 CFR part 1640. 86 FR 18440. This part establishes the regulatory text of the California standard, TB 117–2013, as the mandatory federal flammability standard for upholstered furniture under section 4 of the FFA, and sets forth the statutory requirements. Because the Commission did not consider any comment received on the direct final rule to be a significant adverse comment, the rule went into effect on June 25, 2021, and applies to all upholstered furniture manufactured, imported, or reupholstered on or after that date. However, the compliance date for the new labeling requirement will go into effect on June 25, 2022.

C. Termination of the Upholstered Furniture Rulemaking

The direction in the COVID–19 Act requiring that the California standard, TB 117–2013, be a federally mandated flammability standard promulgated by the CPSC under section 4 of the FFA, supersedes the upholstered furniture rulemaking proceeding initiated by the Commission under the FFA in 1994. Accordingly, on March 30, 2021, the Commission voted to terminate the rulemaking associated with upholstered furniture and directed that notification of the termination of rulemaking be issued in the **Federal Register**.[1] Through this document, the Commission has terminated the upholstered furniture rulemaking proceeding that began with the issuance of the ANPR in 1994, and all subsequent rulemakings in that proceeding including the 2008 NPR.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2021–19939 Filed 9–15–21; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

[Docket No. CPSC–2021–0027]

Poison Prevention Packaging Requirements; Proposed Exemption of Baloxavir Marboxil Tablets in Packages Containing Not More Than 80 mg of the Drug

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission (Commission or CPSC) is proposing to amend the child-resistant packaging requirements to exempt baloxavir marboxil tablets in packages containing not more than 80 mg of the drug, currently marketed as XOFLUZA,™ from the special packaging requirements. XOFLUZA is used to treat the flu, and is taken in one dose within 48 hours of experiencing flu symptoms. The proposed rule would exempt this prescription drug product on the basis that child-resistant packaging is not needed to protect young children from serious injury or illness because the product is not acutely toxic and lacks adverse human experience associated with ingestion.

DATES: Comments should be submitted no later than November 30, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2021–0027, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. The CPSC does not accept comments submitted by electronic mail (email), except through *https://www.regulations.gov.* The CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/Hand Delivery/Courier Written Submissions: Submit comments by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7479.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit electronically confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information please submit it according to the instructions for written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2021–0027, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Scorpio, Ph.D., Division of

[1] *See RCA-Upholstered-Furniture-Flammability-Standard-TB117-2013-DFR-and-NPR.pdf* (*cpsc.gov*).

Pharmacology and Physiology Assessment, Directorate for Health Sciences, Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone (301) 987–2572; *cscorpio@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

1. The Poison Prevention Packaging Act of 1970 and Implementing Regulations

The Poison Prevention Packaging Act of 1970 (PPPA), 15 U.S.C. 1471–1476, gives the Commission authority to establish standards for the ''special packaging'' of household substances, such as drugs, when child-resistant (CR) packaging is necessary to protect children from serious personal injury or illness due to the substance, and the special packaging is technically feasible, practicable, and appropriate for such substance. 15 U.S.C. 1472(a). Special packaging requirements under the PPPA have been codified at 16 CFR parts 1700 and 1702. Specifically, CPSC regulations require special packaging for oral prescription drugs. 16 CFR 1700.14(a)(10). CPSC regulations allow companies to petition the Commission for an exemption from CR requirements. 16 CFR part 1702. Two ''reasonable grounds'' [1] for granting an exemption from the special packaging requirements are: (1) That the degree or nature of the hazard to children in the availability of the substance, by reason of its packaging, is such that special packaging is not required to protect children from serious personal injury or serious illness resulting from handling, using or ingesting the substance; or (2) special packing is not technically feasible, practicable, or appropriate for the subject substance. 16 CFR 1702.17(a) and (b).

If the Commission determines that reasonable grounds for an exemption are presented by a petition, CPSC regulations require publication in the **Federal Register** of a proposed amendment to the listing of substances that require special packaging, stating that the substance at issue is exempt. 16 CFR 1702.17.

2. The Product for Which an Exemption Is Sought

On March 30, 2020, Genentech, Inc. (Genentech), petitioned the Commission to exempt two specified sized tablets of baloxavir marboxil, which it markets as XOFLUZA from the special packaging requirements for oral prescription drugs. XOFLUZA was approved by the U.S. Food and Drug Administration (FDA) in October 2018, with a two-tablet dose for the acute uncomplicated flu in patients older than 12 years old showing symptoms for less than 48 hours. Single tablet doses have recently been approved by the FDA in March 2021. XOFLUZA has been marketed in tablet form and is currently dispensed in CR packaging. The petitioner asserted that an exemption from special packaging is justified because of the lack of toxicity and lack of adverse human experience with the drug. The petitioner also claimed that special packaging is not technically feasible, practicable, or appropriate for XOFLUZA. Staff's briefing memorandum provides a detailed assessment of the petitioner's claims regarding a request for an exemption from the special packing requirements for XOFLUZA. *https://cpsc-d8-media-prod.s3.amazonaws.com/s3fs-public/Petition-to-Exempt-Baloxavir-Marboxil-XOFLUZA-in-40-mg-and-80-mg-Tablet-Doses-from-Special-Packaging-Requirements-of-the-PPPA-Cleared.pdf?VersionId=sLAhJ4THOBCtVMjgA4kxiFmI2.3LzqIj.*

B. Toxicity and Injury Data for XOFLUZA

Toxicity

CPSC staff reviewed the toxicity of XOFLUZA. XOFLUZA has been studied in pediatric patients (Hirotsu, 2019; Heo, 2018; NCT03653364, CAPSTONE 2; Hayden, 2018; Dziewiatkowski et al., 2019). Overall, clinically relevant doses of XOFLUZA (40 or 80 mg total dose) in humans are well tolerated (Dziewiatkowski et al., 2019; Taieb et al., 2019; Ng, 2019; Hayden, 2018).

The analysis of total adverse events (AE) included 10 studies with six treatments and 5628 patients. AE did not differ significantly between placebo and XOFLUZA. For drug-related vomiting, 3297 patients from five studies were included. XOFLUZA did not differ from placebo in these studies. (Taieb et al., 2019). The percentage of patients experiencing any adverse event [2] of 610 patients (12 to 64 years old) in the CAPSTONE 1 clinical trial was 1.0% grade 3 or grade 4, which can be categorized as not serious. Five deaths have been reported by the AER System; [3] however, these deaths have been determined to not be related to XOFLUZA.

The most common AE of the correct dose of XOFLUZA was diarrhea (Heo, 2018; Shionogi prescribing info). The XOFLUZA Product Information, 2021 reported that diarrhea (3%), bronchitis (3%), nausea (2%), headache (1%) were the most significant adverse events found.

Treatment of an overdose of XOFLUZA should consist of general supportive measures, including monitoring of vital signs and observations of the clinical status of the patient. There is no specific antidote for overdose with XOFLUZA and it is unlikely to be significantly removed by dialysis because it is highly protein bound (Prescribing Information for XOFLUZA, 2021; Poisindex, 2021).

Overall, treatment with XOFLUZA is well tolerated. If accidentally ingested, the greatest potential for injury is diarrhea, nausea, and headache. For these reasons, CPSC staff determined that XOFLUZA will not cause serious injury or death upon acute exposure by a child under 5 years old.

Injury Data

CPSC staff searched the Consumer Product Safety Risk Management System (CPSRMS), the National Electronic Injury Surveillance System (NEISS) databases, and reviewed reports from FDA related to adverse events associated with XOFLUZA. CPSC staff found no incidents related to XOFLUZA in CPSRMS or NEISS from January 2015 through December 2020. CPSC staff also reviewed 12 reports received from FDA related to adverse events associated with XOFLUZA. Of the 12 reports, five involved XOFLUZA use only. Of these five incidents, two reported adverse effects. One patient experienced hallucination, fever, and sore throat, and the other patient suffered cardiac failure. Both were unrelated to XOFLUZA. Six incidents involved use of multiple drugs and were considered out of scope, and one was a duplicate.

C. Action on the Petition

After considering the information provided by the petitioner and other available toxicity and human experience data, the Commission concluded preliminarily that the ''lack of toxicity and lack of adverse human experience for the substance'' presented by the availability of 40 mg and 80 mg tablets

[1] A third reasonable ground for an exemption is that special packaging is incompatible with the particular substance. 16 CFR 1702.17(c). The petitioner has not requested an exemption on this basis so it is not relevant here.

[2] The adverse events are: Diarrhea, bronchitis, nasopharyngitis, nausea, sinusitis, increase in the level of AST, headache, vomiting, dizziness, leukopenia and constipation.

[3] The Adverse Event Reporting System (AERS) is a computerized information database designed to support the FDA's post-marketing safety surveillance program for all approved drug and therapeutic biologic products. The FDA uses AERS to monitor for new adverse events and medication errors that might occur with these marketed products.

of baloxavir marboxil (currently marketed as XOFLUZA) is such that special packaging is not required to protect children from serious injury or serious illness from handling, using, or ingesting XOFLUZA. 16 CFR 1702.17(a). Additionally, the Commission found that the petitioner's request for an exemption from special packaging, on the basis that it is not technically feasible, practicable, or appropriate for XOFLUZA, was not warranted based upon the information provided by the petitioner. Therefore, the Commission determined that reasonable grounds for an exemption were presented based on toxicity and voted to grant the petition and begin a rulemaking proceeding to exempt baloxavir marboxil tablets in packages containing not more than 80 mg of the drug from the special packaging requirements for oral prescription drugs.

Once the Commission determines that reasonable grounds for an exemption are presented by the petition, CPSC regulations require publication in the **Federal Register** of a proposed amendment to the listing of substances that require special packaging, stating that the substance at issue is exempt. 16 CFR 1702.17. This document proposes to amend the listing of substances in 16 CFR part 1700 that require special packing to state that baloxavir marboxil tablets in packages containing not more than 80 mg of the drug do not require special packing.

D. Description of the Proposed Rule

The proposed rule would amend 16 CFR part 1700 to include a new exemption from the special packaging requirements for baloxavir marboxil tablets in packages containing not more than 80 mg of the drug in proposed § 1700.14(a)(10)(xxiv). The proposed exemption is intended to cover baloxavir marboxil tablets for any dosage from 80 mg or below. The proposed rule would make no other changes to part 1700.

E. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), an agency that engages in rulemaking generally must prepare initial and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

CPSC staff prepared a preliminary assessment of the impact of the proposed rule to exempt baloxavir marboxil in 40 mg and 80 mg tablet form, currently marketed as XOFLUZA, from special packaging requirements. Genentech, Inc., is a subsidiary of, and owned in its entirety by the multinational corporation, Roche Group, the company that markets XOFLUZA. Roche Group employs 97,735 workers worldwide, of which 26,176 are located in North America. As of February 2020, Genentech employed 13,638 people. Roche Group's operating businesses are organized into two divisions: Pharmaceuticals and Diagnostics. Genentech, as the former third segment, has been integrated into Roche Pharmaceuticals. Sales in the Pharmaceuticals Division were $48.1 billion in 2019.

There are two main economic reasons for why granting the petition would not result in the exemption having a significant economic impact on a substantial number of small entities. First, the exemption for this drug is not likely to impact a large number of firms, therefore it is unlikely that granting the petition would impact a substantial number of small entities. Second, CR packaging for XOFLUZA tablets is unlikely to be a significant amount of any firm's business, therefore granting the petition would not have a significant economic impact on any small entity. However, if the petitioner relocates packaging to another country, it could potentially result in some minor negative impacts for small domestic firms. Based on this assessment, we preliminarily conclude that the proposed amendment exempting baloxavir marboxil tablets in packages containing not more than 80 mg of the drug would not have a significant impact on a substantial number of small businesses or other small entities. We seek public comment on any small business impacts that might result from the exemption in the proposed rule.

F. Effective Date

The Administrative Procedure Act (APA) generally requires that a substantive rule must be published not less than 30 days before its effective date. 5 U.S.C. 553(d)(1). The NPR proposes an effective date of 30 days after publication of the final rule in the **Federal Register**, because the proposed rule would provide an exemption from the requirement to use special packaging for baloxavir marboxil tablets in packages containing not more than 80 mg of the drug.

G. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement where they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(3). Rules exempting products from poison prevention packaging rules fall within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

H. Preemption

The PPPA provides that, generally, when a special packaging standard issued under the PPPA is in effect, ''no State or political subdivision thereof shall have any authority either to establish or continue in effect, with respect to such household substance, any standard for special packaging (and any exemption therefrom and requirement related thereto) which is not identical to the [PPPA] standard.'' 15 U.S.C. 1476(a). A state or local standard may be excepted from this preemptive effect if: (1) The state or local standard provides a higher degree of protection from the risk of injury or illness than the PPPA standard; and (2) the state or political subdivision applies to the Commission for an exemption from the PPPA's preemption clause and the Commission grants the exemption through a process specified at 16 CFR part 1061. 15 U.S.C. 1476(c)(1). In addition, the federal government, or a state or local government, may establish and continue in effect a nonidentical special packaging requirement that provides a higher degree of protection than the PPPA requirement for a household substance for the federal, state, or local government's own use. 15 U.S.C. 1476(b).

Thus, with the exceptions noted above, the proposed rule exempting baloxavir marboxil tablets in packages containing not more than 80 mg of the drug from special packaging requirements, if finalized, would preempt nonidentical state or local special packaging standards for the substance.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, the Commission proposes to amend 16 CFR part 1700 as follows:

PART 1700—[AMENDED]

■ 1. The authority citation for part 1700 continues to read as follows:

Authority: 15 U.S.C. 1471—76. Secs. 1700.1 and 1700.14 also issued under 15 U.S.C. 2079(a).

■ 2. Section 1700.14 is amended by adding paragraph (a)(10)(xxiv) to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) * * *

(10) * * *

(xxiv) Baloxavir marboxil tablets in packages containing not more than 80 mg of the drug.

* * * * *

Alberta E. Mills,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2021–19953 Filed 9–15–21; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF STATE

22 CFR Parts 40, 41, and 42

[Public Notice: 11459]

RIN 1400–AF30

Visas: Immigrant Visas

AGENCY: Department of State.

ACTION: Request for public input.

SUMMARY: The Department of State (''Department'') seeks public comments identifying barriers that impede access to, and fair, efficient adjudication of, immigration benefits, and recommendations on how to remove those barriers, and identifying any Department actions that fail to promote access to the legal immigration system.

DATES: Written comments must be received on or before October 18, 2021.

ADDRESSES: You may submit comments, identified by RIN 1400–AF30, by either of the following methods:

- *Internet (preferred):* At *www.regulations.gov,* you can search for the document using Docket Number DOS–2021–0017 or using the notice RIN 1400–AF30.
- *Email:* Claire Kelly, Office of Visa Services, Bureau of Consular Affairs, U.S. Department of State, *VisaRegs@state.gov.* Please include the RIN or Docket Number in the Subject Line.

FOR FURTHER INFORMATION CONTACT: Claire Kelly, Office of Visa Services, Bureau of Consular Affairs, Department of State, 600 19th St. NW, Washington, DC 20006, (202) 485–7586.

SUPPLEMENTARY INFORMATION:

I. Public Participation

All interested parties are invited to respond to this Request for Public Input by submitting written views and comments on all aspects of the Department of State's implementation and execution of its authorities relating to the immigrant visa function, including existing regulations, orders, guidance documents, policies, and any other similar agency actions. Comments must be submitted in English or commenters must submit an English translation. Comments that will provide the most assistance to the Department in considering recommendations will reference a specific existing regulation, order, guidance, policy, or any other similar agency action, explain the reason for any recommended change, and include information that supports the recommended change.

II. Background

Executive Order (E.O.) 14012 describes a policy of the Administration to restore faith in our legal immigration system and to strengthen integration and inclusion efforts for new Americans. As a first step to advance this policy, section 3 of the E.O. tasked the Secretary of State, the Attorney General, and the Secretary of Homeland Security with identifying:

- Barriers that impede access to immigration benefits and fair, efficient adjudications of these benefits and make recommendations on how to remove these barriers, as appropriate and consistent with applicable law; and
- any agency actions that fail to promote access to the legal immigration system . . . and recommend steps, as appropriate and consistent with applicable law, to revise or rescind those agency actions.[1]

The Department of State's role in facilitating access to the U.S. immigration system includes the issuance of immigrant visas to eligible individuals outside of the United States. The Department welcomes comments on: (1) Any existing barriers that impede access to, and fair, efficient adjudication of, immigrant visas, and (2) recommendations on actions the Department could take to improve access to adjudication of immigrant visas; however the Department is not soliciting comments on administrative processing or communication surrounding administrative processing as the Department at this time is unable to alter or improve communication surrounding administrative processing. Additionally, as the Department is already undertaking efforts to address the Immigrant Visa (including Diversity Visa) backlog caused by Presidential Proclamation 10014 [2] and the global pandemic's effect on visa operations, comments on this area are less useful than comments on perceived systemic barriers pre-pandemic. This Request for Public Input is not soliciting comments on areas outside the Department's responsibility, including the functions, roles and responsibilities vested in the Department of Homeland Security, the Department of Labor, or Department of Justice, though the Department is interested in learning whether there are areas of overlap between any of the policies of these agencies and the Department of State that create such barriers, inefficiencies, or that impede access to, fair and efficient adjudication of immigrant visas. The Department is not obligated to respond in any way to comments received in response to this Request for Public Input; however, the Department intends to consider all comments in developing the report to the President required under section 3(c) of E.O. 14012, describing its progress towards implementing a plan to advance the policy set forth in section 1 of E.O. 14012. This Request for Public Input does not create any right for members of the public who submit comments or any obligations for the Department of State.

[1] E.O. 14012, 86 FR 8277 (February 5, 2021).

III. Request for Input

A. Maximizing the Value of Public Feedback

This notice contains a list of questions, the answers to which may assist the Department in identifying aspects of immigrant visa-related processes that may benefit from the Department's review with the goals of eliminating any undue burdens on the public, saving costs for both the public and the Department, increasing navigability, saving time, reducing perceived confusion, promoting simplification, improving efficiency, and/or removing barriers that unnecessarily impede access to immigrant visas. The Department encourages public comment on these questions and seeks any other information or data commenters believe are relevant to this notice. The type of feedback that is most useful to the Department will identify specific regulations and/or processes and include actionable information and/or data and/or provide viable alternatives, that meet statutory obligations and regulatory objectives and requirements. Public feedback that simply states that a stakeholder feels strongly that the

[2] Proclamation No. 10014, 85 FR 23441 (April 27, 2020).

Department should change its processes but does not contain specific information on what change should be considered or how a proposed change will reduce barriers, or otherwise improve existing processes, is less useful to the Department.

We highlight a few of those points here, noting that the comments that will be most useful to the Department are those that are guided by the below principles. Commenters should consider these principles as they answer and respond to the questions in this Request for Public Input:

- Commenters should identify, with specificity, the regulation, order, guidance document, policy, or other similar agency action at issue, providing the relevant Code of Federal Regulation (CFR) citation if the comment recommends revising a current Department regulation. If a new regulation is being suggested addressing a subject matter that is not currently codified in regulations, it should be identified with as much specificity as possible and with references to the program/process and statutory authority.
- Commenters should provide, in as much detail as possible, an explanation why a Department regulation, order, guidance document, policy, other similar agency action should be modified, streamlined, expanded, or repealed, as well as specific suggestions about how the Department can better achieve its objectives and reduce unnecessary burdens on the public.
- To the extent feasible, commenters are invited to provide specific information on the costs, burdens, and benefits of existing requirements and/or how proposed changes would reduce costs and burdens, and/or increase benefits to the Department or the public. Commenters also are invited to address how the Department can address procedural obstacles to fair and efficient adjudications related to immigrant visas attributable to existing regulations, orders, guidance documents, policies, and any other similar agency actions, and whether there are existing sources of data that the Department can use to identify and evaluate inefficiencies and unwarranted barriers to accessing the Department's visa-related services.
- Comments should emphasize any unduly burdensome processes that have been in effect for enough time to warrant a fair evaluation, in most cases for more than one year.
- Comments that reiterate substantive issues already raised in public comments submitted on recently issued rules will be less useful, unless they provide new information—by, for example, pointing to new studies or data, or offering novel alternatives.

B. List of Questions for Commenters

The below non-exhaustive list of questions is meant to assist members of the public in formulating input, and is not intended to restrict the input that members of the public may provide:

(1) Are there any immigrant visa related regulations, orders, guidance documents, policies, or other similar agency actions that you consider to be unjustified or excessive barriers that impede easy access to immigrant visa-related services and fair, efficient adjudication of immigrant visas? For any identified barrier, is the perceived barrier created by duplication, overlap, or inconsistency of requirements?

(2) Are there any immigrant visa regulations, orders, guidance documents, policies, or other similar agency actions that impose undue burdens on applicants that are not tailored to achieving the Department's objectives?

(3) Are there any immigrant visa regulations, orders, guidance documents, policies, or other similar agency actions that disproportionally and unreasonably burden disadvantaged, vulnerable, or marginalized communities? If so, please specify the regulations, orders, guidance documents, policies, or other similar agency actions to include citations of any applicable Department regulations, providing a description of the specific burden and the relevant communities.

(4) Are there immigrant visa regulations, orders, guidance documents, policies, or other similar agency actions for which implementation could be modified to reduce unnecessary administrative burdens? For example, are there regulations, orders, guidance documents, policies, or other similar agency actions, specifically that could be modernized, streamlined, or otherwise improved?

(5) Is there information you believe the Department currently collects from immigrant visa applicants that it does not need or that is not effectively scoped to information relevant to the adjudication of an immigrant visa application? Are there immigrant visa regulations, forms or other information collections that have been overtaken by technological developments?

(6) Are there new technologies that the Department should consider leveraging to modify, streamline, or do away with existing immigrant visa regulatory or form requirements?

Additionally, the Department is interested feedback on the following:

(1) Communication—

a. How could the immigrant visa application system (Consular Electronic Application Center) be improved to make the required steps in the immigrant visa application process clearer? How can the Department better communicate information regarding the status of active immigrant visa cases, what steps the applicant may need to take to advance the case, and when the case will be scheduled for interview?

(2) Websites—

a. If you consulted *nvc.state.gov* to learn about the immigrant visa process, what could be improved about it?

b. If you have used the country-specific document finder tool (reciprocity),[3] how could it be improved? If you have used post-specific interview instructions found on individual post's websites, what could be improved about them?

c. Are there aspects of visa appointment scheduling the Department should consider modernizing, streamlining, or otherwise improving? Detailed suggestions are most helpful.

Instructions: If you submit a comment, you must include the agency name, Department of State, and RIN 1400–AF30 for this request for public input in the title or body of the comment. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and therefore will include any personal information you provide. Therefore, because all submissions will be public, you may wish to consider limiting the amount of personal information that you provide. The Department of State may withhold from public viewing information provided in comments that it determines may infringe privacy rights of an individual or is offensive. For additional information, please read the Privacy Act notice available in the footer at *http://www.regulations.gov.*

Zachary A. Parker,

Director, Office of Directives Management, Department of State.

[FR Doc. 2021–20020 Filed 9–15–21; 8:45 am]

BILLING CODE 4710–06–P

[3] *https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country.html.*

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2021–0540]

RIN 1625–AA08

Special Local Regulations; Choptank River, Cambridge, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The Coast Guard is withdrawing its proposed rule to establish temporary special local regulations for certain waters of the Choptank River. The rulemaking was initiated to establish a special local regulation during the ''Cambridge Classic Power Boat Regatta,'' a marine event to be held on certain waters of the Choptank River at Cambridge, MD. The proposed rule is being withdrawn because it is no longer necessary, as the event sponsor has cancelled the power boat racing event.

DATES: The Coast Guard is withdrawing the proposed rule for the event scheduled from 10 a.m. to 5 p.m. on October 9, 2021, and those same hours on October 10, 2021 published on August 3, 2021 (86 FR 41798) as of September 16, 2021.

ADDRESSES: To view the docket for this withdrawn rulemaking, go to *https://www.regulations.gov,* type USCG–2021–0540 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, call or email Mr. Ron Houck, Waterways Management Division, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576– 2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Background Information and Regulatory History

On August 3, 2021, we published an NPRM entitled ''Special Local Regulations; Choptank River, Cambridge, MD'' in the **Federal Register** (86 FR 41798). The proposed rulemaking concerned the Coast Guard's establishment of a temporary special local regulation for certain navigable waters of the Choptank River, effective from 9 a.m. on October 9, 2021 through 6 p.m. on October 10, 2021. This action was necessary to provide for the safety of life on these waters during a power boat racing event. This rulemaking would have prohibited persons and vessels from entering the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or the Coast Guard Event Patrol Commander.

Withdrawal

The proposed rule is being withdrawn due to the regulated area no longer being necessary following a cancellation of the power boat racing event by the event sponsor.

Authority

We issue this notice of withdrawal under the authority of 46 U.S.C. 70041.

Dated: September 13, 2021.

David E. O'Connell,

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

[FR Doc. 2021–20007 Filed 9–15–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 2

[DOI–2018–0012: 201D0102DM, DS65100000, DLSN00000.000000, DX65103]

RIN 1090–AB15

Privacy Act Regulations; Exemption for the Insider Threat Program

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Interior is proposing to amend its regulations to exempt certain records in the INTERIOR/DOI–50, Insider Threat Program, system of records from one or more provisions of the Privacy Act of 1974 because of criminal, civil, and administrative law enforcement requirements.

DATES: Submit comments on or before November 15, 2021.

ADDRESSES: You may submit comments, identified by docket number [DOI–2018–0012] or [Regulatory Information Number (RIN) 1090–AB15], by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for sending comments.
- *Email: DOI_Privacy@ios.doi.gov.* Include docket number [DOI–2018–0012] or RIN 1090–AB15 in the subject line of the message.
- *U.S. mail or hand-delivery:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

Instructions: All submissions received must include the agency name and docket number [DOI–2018–0012] or RIN 1090–AB15 for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240, *DOI_Privacy@ios.doi.gov* or (202) 208–1605.

SUPPLEMENTARY INFORMATION:

Background

The Privacy Act of 1974, as amended, 5 U.S.C. 552a, governs the means by which the U.S. Government collects, maintains, uses and disseminates personally identifiable information. The Privacy Act applies to records about individuals that are maintained in a ''system of records.'' A system of records is a group of any records under the control of an agency from which information about an individual is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. See 5 U.S.C. 552a(a)(4) and (5).

An individual may request access to records containing information about him or herself, 5 U.S.C. 552a(b), (c) and (d). However, the Privacy Act authorizes Federal agencies to exempt systems of records from access by individuals under certain circumstances, such as where the access or disclosure of such information would impede national security or law enforcement efforts. Exemptions from Privacy Act provisions must be established by regulation, 5 U.S.C. 552a(j) and (k).

The Department of the Interior (DOI) Office of Law Enforcement and Security published the INTERIOR/DOI–50, Insider Threat Program, system of records notice in the **Federal Register** at 79 FR 52033 on September 2, 2014, in accordance with Presidential Executive Order 13587, issued October 7, 2011, which required Federal agencies to establish an insider threat detection and prevention program to ensure the security of classified networks and the responsible sharing and safeguarding of classified information consistent with appropriate protections for privacy and civil liberties. This system of records

facilitates management of counterintelligence and insider threat investigations and activities associated with counterintelligence complaints, inquiries and investigations; identification of potential threats to DOI resources and information assets; and referrals of potential insider threats to internal and external partners. Insider threats include attempted or actual espionage, subversion, sabotage, terrorism or extremist activities directed against the DOI and its personnel, facilities, resources, and activities; unauthorized use of or intrusion into automated information systems; unauthorized disclosure of classified, controlled unclassified, sensitive, or proprietary-information or technology; indicators of potential insider threats or other incidents that may indicate activities of an insider threat.

The system contains classified and unclassified intelligence and investigatory records related to counterintelligence and insider threat activities that are exempt from certain provisions of the Privacy Act, 5 U.S.C. 552a(j) and (k). The DOI previously published a final rule in the **Federal Register** at 79 FR 68799 (November 19, 2014) to amend DOI Privacy Act regulations at 43 CFR 2.254 to exempt certain records in this system from subsections (c)(3), (c)(4), (d), (e)(1) through (e)(3), (e)(4)(G) through (e)(4)(I), (e)(5), (e)(8), (e)(12), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). In this notice of proposed rulemaking (NPRM), DOI is proposing to claim additional exemptions from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1) and (k)(5).

DOI previously published an NPRM in the **Federal Register** at 85 FR 7515 (February 10, 2020) to claim exemptions for the INTERIOR/DOI–46, Physical Security Access Files, system of records that proposed a revision of the DOI Privacy Act regulations at 43 CFR 2.254 to redesignate the existing paragraphs and add new paragraphs for additional exemptions under 5 U.S.C. 552a(k). A new paragraph (b) was reserved for exemptions claimed under 5 U.S.C. 552a(k)(1) as indicated in this NPRM for the INTERIOR/DOI–50, Insider Threat Program. The previous paragraph (c) for investigatory records exempt under 5 U.S.C. 552a(k)(5) was redesignated to paragraph (e) to allow for a new paragraph (d) for exemptions claimed under 5 U.S.C. 552(k)(3) related to records maintained in connection with providing protective services. The new and redesignated paragraphs proposed for section 2.254 will be effective upon publication of the INTERIOR/DOI–46 final rule in the **Federal Register** and will align with the exemptions proposed in this NPRM for the INTERIOR/DOI–50, Insider Threat Program.

Under 5 U.S.C. 552a(k)(1), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of the Privacy Act of 1974, 5 U.S.C. 552a, if the system of records is subject to the provisions of 5 U.S.C. 552(b)(1) where the records are (A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and (B) are in fact properly classified pursuant to such Executive Order. Some records in this system are deemed classified and subject to Executive Orders for the maintenance of records that must be kept secret in the interest of national security, such as Executive Order 12333, United States Intelligence Activities (as amended); Executive Order 12829, National Industrial Security Program; Executive Order 12968, Access to Classified Information; Executive Order 13526, Classified National Security Information; and Executive Order 13587, Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information. Additionally, records in this system may be related to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information that are exempt from one or more provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5).

Because this system of records contains classified and investigative material within the provisions of 5 U.S.C. 552a(k)(1) and (k)(5), the DOI proposes to exempt the system of records from one or more of the following provisions: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G) through (e)(4)(I), and (f). Where a release would not interfere with or adversely affect investigations or law enforcement activities, including but not limited to revealing sensitive information or compromising confidential sources, the exemption may be waived on a case-by-case basis. Exemptions from these particular subsections are justified for the following reasons:

1. 5 U.S.C. 552a(c)(3). This section requires an agency to make the accounting of each disclosure of records available to the individual named in the record upon request. Release of accounting of disclosures would alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of the investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses and their families, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

2. 5 U.S.C. 552a(d); (e)(4)(G) and (e)(4)(H); and (f). These sections require an agency to provide notice and disclosure to individuals that a system contains records pertaining to the individual, as well as providing rights of access and amendment. Granting access to records in the Insider Threat Program system could inform the subject of an investigation of an actual or potential criminal violation of the existence of that investigation, of the nature and scope of the information and evidence obtained, of the identity of confidential sources, witnesses, and law enforcement personnel, and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation; endanger the physical safety of confidential sources, witnesses, and law enforcement personnel, as well as their families; lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony; and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified, security-sensitive, or confidential information and could constitute an unwarranted invasion of the personal privacy of others.

3. 5 U.S.C. 552a(e)(1). This section requires the agency to maintain information about an individual only to the extent that such information is relevant or necessary. The application of this provision could impair investigations and law enforcement, because it is not always possible to determine the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. In addition, during the course of the investigation, the investigator may obtain information that is incidental to the main purpose of the investigation but which may relate to matters under

the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation, an investigator may obtain information concerning the violation of laws outside the scope of the investigator's jurisdiction. In the interest of effective law enforcement, DOI investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for other law enforcement agencies.

4. 5 U.S.C. 552a(e)(4)(I). This section requires an agency to provide public notice of the categories of sources of records in the system. The application of this section could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promise(s) of anonymity and confidentiality. This could compromise DOI's ability to conduct investigations and to identify, detect and apprehend violators.

Procedural Requirements

1. Regulatory Planning and Review (E.O. 12866 and E.O. 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This rule does not impose a requirement for small businesses to report or keep records on any of the requirements contained in this rule. The exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the Regulatory Flexibility Act.

3. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments in the aggregate, or on the private sector, of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. This rule makes only minor changes to 43 CFR part 2. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule makes only minor changes to 43 CFR part 2. A takings implication assessment is not required.

6. Federalism (E.O. 13132)

In accordance with Executive Order 13132, this rule does not have any federalism implications to warrant the preparation of a Federalism Assessment. The rule is not associated with, nor will it 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. A Federalism Assessment is not required.

7. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Does not unduly burden the judicial system.

(b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

8. Consultation With Indian Tribes (E.O. 13175)

In accordance with Executive Order 13175, the Department of the Interior has evaluated this rule and determined that it would have no substantial effects on federally recognized Indian Tribes.

9. Paperwork Reduction Act

This rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required.

10. National Environmental Policy Act

This rule does not constitute a major Federal Action significantly affecting the quality for the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. We have determined the rule is categorically excluded under 43 CFR 46.210(i) because it is administrative, legal, and technical in nature. We also have determined the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

11. Effects on Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

12. Clarity of This Regulation

We are required by Executive Order 12866 and 12988, the Plain Writing Act of 2010 (Pub. L. 111–274), and the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means each rule we publish must:

—Be logically organized;
—Use the active voice to address readers directly;
—Use clear language rather than jargon;
—Be divided into short sections and sentences; and
—Use lists and table wherever possible.

List of Subjects in 43 CFR Part 2

Administrative practice and procedure, Confidential information, Courts, Freedom of Information Act, Privacy Act.

For the reasons stated in the preamble, the Department of the Interior proposes to amend 43 CFR part 2 as follows:

PART 2—FREEDOM OF INFORMATION ACT; RECORDS AND TESTIMONY

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

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 3717; 43 U.S.C. 1460, 1461.

■ 2. Amend § 2.254 by:
■ a. Revising paragraphs (b) introductory text and (b)(1);
■ b. Reserving paragraph (b)(2);
■ c. Revising paragraph (c) introductory text;
■ d. Reserving paragraph (c)(5); and
■ e. Adding paragraph (c)(6).

The revisions and additions read as follows:

§ 2.254 Exemptions.

* * * * *

(b) *Classified records exempt under 5 U.S.C. 552a(k)(1).* Pursuant to 5 U.S.C. 552a(k)(1), the following systems of records have been exempted from paragraphs (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these paragraphs:

(1) INTERIOR/DOI–50, Insider Threat Program.

(2) [Reserved]

* * * * *

(c) *Investigatory records exempt under 5 U.S.C. 552a(k)(5).* Pursuant to 5 U.S.C. 552a(k)(5), the following systems of records have been exempted from paragraphs (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these paragraphs:

* * * * *

(5) [Reserved]

(6) INTERIOR/DOI–50, Insider Threat Program.

Teri Barnett,

Departmental Privacy Officer, Department of the Interior.

[FR Doc. 2021–18711 Filed 9–15–21; 8:45 am]

BILLING CODE 4334–63–P

Notices

Federal Register
Vol. 86, No. 177
Thursday, September 16, 2021

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice for Comment on Two Strategic Plans for the Subcommittee on Aquaculture Science Planning and Regulatory Efficiency Task Forces and on Updating the National Aquaculture Development Plan

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In October 2018, the SCA established a Science Planning Task Force charged with documenting Federal science and technology opportunities and priorities for aquaculture by revising and updating the National Strategic Plan for Federal Aquaculture Research (2014–2019). Similarly, in February 2019, the SCA established a Regulatory Efficiency Task Force charged with developing a new plan for interagency science and technology coordination to improve regulatory efficiency, research and technology development, and economic growth. The Task Forces are seeking public comment on Science and Regulatory Efficiency strategic plans to determine if their respective topics are adequately covered. See **SUPPLEMENTARY INFORMATION** for more details.

DATES: In the **Federal Register** of September 1, 2021, FR Doc. 2021–18723, on Page 48973, under dates should read as follows: Comments must be received by October 4, 2021 to be assured of consideration.

SUPPLEMENTARY INFORMATION: The Subcommittee on Aquaculture (SCA) is a statutory subcommittee that operates under the Committee on Environment of the National Science and Technology Council (NSTC) under the Office of Science and Technology Policy in the Executive Office of the President [National Aquaculture Act of 1980 (Pub. L. 96–362. 94 Stat. 1198, 16 U.S.C. 2801, *et seq.*) and the National Aquaculture Improvement Act of 1985 (Pub. L. 99–198, 99 Stat. 1641)].

In addition, in May of 2020, the SCA established an Economic Development Task Force charged with developing a strategic plan for economic development through aquaculture. Separately from SCA, the National Aquaculture Act of 1980 requires select federal agencies to develop a National Aquaculture Development Plan (NADP). Last completed in 1983, the NADP describes aquaculture associated technologies, problems, and opportunities in the United States and its territories.

It recommends actions to solve problems and analyzes the social, environmental, and economic impacts of growth in aquaculture. The SCA plans to update the NADP using the Science and Regulatory Efficiency plans described here, with the addition of the Economic Development plan currently in process.

Signed at Washington, DC, September 13, 2021.

Yvette Anderson,

Federal Register Liaison Officer, ARS, ERS, NASS.

[FR Doc. 2021–20053 Filed 9–15–21; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 13, 2021.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by October 18, 2021 will be considered. 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 information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Team Nutrition Database.

OMB Control Number: 0584–0642.

Summary of Collection: The collection of this information aims to help the mission of USDA's Team Nutrition initiative, which is to support national efforts to promote lifelong healthy food choices and physical activity by improving the nutrition practices of the Child Nutrition Programs. The collected information helps to build and maintain a stronger network among organizations participating in the Child and Adult Care Food Program (CACFP) and schools participating in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) committed to providing healthy meals and environments for their program participants. It helps to keep these entities up-to-date with the available resources developed under the Team Nutrition initiative to support the nutrition standards of their respective Child Nutrition Programs. The Team Nutrition initiative of the United States Department of Agriculture's Food and Nutrition Service falls under SEC. 19. [42 U.S.C. 1788] TEAM NUTRITION NETWORK, Child Nutrition Act of 1966.

Need and Use of the Information: The purposes of the team nutrition network

are—(1) to establish State systems to promote the nutritional health of school children of the United States through nutrition education and the use of team nutrition messages and material developed by the Secretary, and to encourage regular physical activity and other activities that support healthy lifestyles for children, including those based on the most recent Dietary Guidelines for Americans published under section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 5341); (2) to provide assistance to States for the development of comprehensive and integrated nutrition education and active living programs in schools and facilities that participate in child nutrition programs; (3) to provide training and technical assistance and disseminate team nutrition messages to States, school and community nutrition programs, and child nutrition food service professionals; (4) to coordinate and collaborate with other nutrition education and active living programs that share similar goals and purposes; and (5) to identify and share innovative programs with demonstrated effectiveness in helping children to maintain a healthy weight by enhancing student understanding of healthful eating patterns and the importance of regular physical activity.

Description of Respondents: State, Local, Tribal Governments, Private Sector (Businesses or other for-profits/Not-for-profit institutions.

Number of Respondents: 122,130.

Frequency of Responses: Reporting: Annually, Weekly.

Total Burden Hours: 35,484.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–19983 Filed 9–15–21; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request: Additional Information To Be Collected Under the Uniform Grant Application Package for Discretionary Grant Programs for the Emergency Food Assistance Program Reach and Resiliency Grants

Correction

In notice document 2021–19764 appearing on pages 51110–51111 in the issue of Tuesday, September 14, 2021, make the following correction:

On page 51110, in the first column, in the **DATES** section, in the third and fourth lines ''September 14, 2021.'' should read ''October 14, 2021.''

[FR Doc. C1–2021–19764 Filed 9–15–21; 8:45 am]

BILLING CODE 0099–10–D

DEPARTMENT OF AGRICULTURE

Forest Service

Tahoe National Forest; California; North Yuba Landscape Resilience Project EIS

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, U.S. Department of Agriculture, is preparing an Environmental Impact Statement (EIS) for the North Yuba Landscape Resilience Project. The purpose of the Project is to improve and restore forest health and resilience, reduce the risk of uncharacteristic wildfire, protect and secure water supplies, and protect communities from the effects of high-severity wildfire and climate change in the North Yuba River watershed. Actions to reduce hazardous forest fuels and enhance forest resilience to severe disturbances from wildfire, insect and disease infestation, drought, and anticipated future climate change are intended to provide long-term benefits to the Landscape's communities and ecosystems. These actions include several project-specific amendments to the Land Management Plan for the Tahoe National Forest related to management of California spotted owl habitat. The amendments are based on the Conservation Strategy for the California Spotted Owl in the Sierra Nevada (USDA Forest Service 2019) and rely on the best available science.

DATES: Comments concerning the scope of the analysis must be received 30 days from date of publication in the **Federal Register**. The draft environmental impact statement is expected July 2022, and the final environmental impact statement is expected March 2023.

ADDRESSES: Send written comments via mail or by hand delivery to Eli Ilano, Tahoe National Forest Supervisor, c/o Laurie Perrot, Attn: North Yuba Project, 631 Coyote Street, Nevada City, CA 95959. Comments may also be submitted electronically: *http://www.fs.fed.us/nepa/nepa_project_exp.php?project=59693.*

FOR FURTHER INFORMATION CONTACT: Laurie Perrot, Forest Environmental Coordinator, *laurie.perrot@usda.gov.* Additional information concerning the proposed Project is available online at *http://www.fs.usda.gov/projects/tahoe/landmanagement/projects.* Individuals who use telecommunication devices for the hearing-impaired (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The proposed North Yuba Landscape Resilience Project (Project) is a watershed-scale forest restoration project in the North Yuba Watershed within the Tahoe National Forest developed through a collaborative process by the North Yuba Forest Partnership, a diverse group of nine entities. The Project area stretches from New Bullards Bar Reservoir east up to the Sierra Crest along Highway 49. The planning area (or Landscape) is approximately 275,000 acres, of which approximately 210,000 acres are National Forest System lands. The watershed includes substantial forest habitat, is an important source of water to downstream users, supports high biodiversity, offers excellent opportunities for recreation, and is home to the communities of Camptonville, Downieville, and Sierra City.

Many homes and communities are located within and near the Landscape's forested areas. Recognizing community safety and forest health are complementary and interrelated, the Forest Service is acting together with other public and private stakeholders to reduce the risk of high-severity wildfire and protect communities at an increased pace and scale, given the geographic scope and severity of the problem.

Given project implementation will occur over many years, it is desirable to allow regular opportunities to address changing conditions on the ground (*e.g.,* insect outbreak, wildfire, etc.) and provide periodic formal, structured public comment and pre-decisional administrative review opportunities before decisions are made. Toward this end, a staged decision-making approach is planned for this Project. Staged decision-making means proposed actions for the entire Landscape would be analyzed in the EIS; however, separate records of decisions would be issued for smaller sub-project areas within the Landscape. This approach would allow surveys to be completed prior to each decision and provide the opportunity to review potential new information or changed circumstances that could have a bearing on the proposed action and its impacts and

potentially require supplemental NEPA analysis.

Purpose and Need for Action

Tahoe National Forest Land and Resource Management Plan (LRMP 1990) as amended by the *Sierra Nevada Forest Plan Amendment Record of Decision* (SNFPA ROD 2004), collectively referred to as the Forest Plan, provides the foundation for the purpose of the Project. The Project's purpose is further supported by the North Yuba Forest Partnership's four goals for this Landscape: (1) Improve and restore forest health and resilience, which is aligned with Forest Plan direction to respond to deteriorating forest health by reducing susceptibility of forest stands to insect- and drought-related tree mortality (SNFPA ROD, pp. 6, 32, and 44–48); (2) reduce the risk of high severity wildfire, which is aligned with Forest Plan direction to reduce threats to communities and wildlife habitat from large, severe wildfires (SNFPA ROD, pp. 8, 34, and 44–48); (3) protect local communities from the effects of high severity wildfire and climate change, which is aligned with Forest Plan direction to reduce the risk of wildfire to communities in the urban wildland interface while modifying fire behavior over the broader landscape (SNFPA ROD, pp. 3, 34, and 45–46); and (4) protect and secure water supplies through restoring watershed process and function, which is aligned with Forest Plan direction for addressing forest health; reducing risk of large, severe wildfires; and maintaining, restoring, and enhancing aquatic, riparian, and meadow ecosystems (SNFPA ROD, pp. 32–34, 42–43, and 62–66).

Needs for this proposal are driven by existing problematic conditions in the North Yuba Landscape in the areas of forest resilience, fire dynamics, fire-adapted communities, water security, and biodiversity conservation. Actions are needed to: (1) Restore forest structure and species composition to develop heterogeneous forest stands and a forested landscape resilient to severe impacts from wildfire, insect and disease infestation, drought, and anticipated future conditions resulting from climate change; (2) reduce hazardous forest fuels to reduce wildfire spread and intensity and facilitate reintroduction of more frequent, low- to moderate-severity fires; (3) reduce hazardous forest fuels and stand densities in strategic locations to help protect communities and critical infrastructure in the event of a wildfire and to facilitate wildfire management operations; (4) reduce sedimentation from existing roads, trails, ditches, and other diversions and restore the natural hydrologic function of soils, meadows, and fens; and (5) maintain, enhance, and restore important terrestrial, riparian, and aquatic habitats.

Proposed Action

The Tahoe National Forest is proposing multiple actions to meet the Project's purpose and need, including prescribed fire; thinning; opening creation; strategic tree planting; sanitation cutting and stand improvement; restoration of aspen stands, meadows, and fens; stream channel restoration; soil decompaction; road repair, maintenance, and decommissioning; and removal of non-native invasive plants. In addition, project-specific amendments to the Tahoe National Forest Land and Resource Management Plan (1990 and 2004, as amended) are proposed.

Actions are proposed in the following emphasis areas: (1) Forest matrix; (2) infrastructure, strategic fuel area, and designated recreation site; and (3) unique ecological communities. Landscape-wide actions are proposed for roads, soils, and non-native invasive plant treatments.

Vegetation and fuels management treatments include prescribed fire, thinning from below, variable density thinning, creation of one to three-acre openings, strategic tree planting, and sanitation cutting and stand improvement. Prescribed fire includes underburning and piling and burning as well as activities needed to prepare areas for burning, such as mastication, chipping and hand cutting and/or pruning shrubs and small trees, lopping and scattering cut material, and/or machine or hand cutting and piling of material and fire-control line construction.

Different types and combinations of activities are proposed in key areas designated in the Forest Plan: (1) Inventoried roadless areas (IRAs), (2) California spotted owl and northern goshawk protected activity centers (PACs), (3) California spotted owl home range core areas (HRCAs), and (4) other forested areas, which include wildland urban intermix (WUI) threat zones, old forest emphasis areas, and general forest areas. The proposed action recognizes the importance of re-introducing fire in the Landscape. In all designated areas, forest stands needing treatment would first be evaluated to determine whether prescribed fire could be applied as a stand-alone treatment. In such cases, prescribed fire would need to be effective in meeting treatment objectives for the stand(s) without resulting in excessive rates of fire spread and fire-caused mortality of large trees.

Encroaching trees would be removed as needed in approximately 1,716 acres of meadows and fens. Roads and/or trails impacting the meadow or fen would be realigned or reconstructed to reduce or eliminate their impact to the meadow or fen. Ditches would be plugged, and other diversions disconnected from the meadow or fen to restore natural hydrology. Incised stream channels in meadows or fens would be restored.

Proposed road management actions include maintenance, improvement, realignment, and decommissioning. All temporary roads used for project implementation would be decommissioned upon completion of project activities. No new permanent roads are proposed for construction. Manual, cultural, and chemical methods would be used for invasive plant removal.

Forest Plan Amendment

The proposed action includes several project-specific amendments to the *Tahoe National Forest Land and Resource Management Plan* (LRMP 1990) as amended by the *Sierra Nevada Forest Plan Amendment Record of Decision* (SNFPA ROD 2004). Proposed changes include modifying, removing, and adding specific forest plan components to: (1) Protect California spotted owl protected activity centers (PACs) by enhancing their resilience to severe disturbances, thereby providing for their long-term sustainability on the Landscape; (2) address needs for enhancing habitat resiliency in California spotted owl home range core areas (HRCAs); (3) balance needs for protecting PACs with protecting public and firefighter safety and reducing fire hazards near communities, critical access roads, and infrastructure for emergency services, communications, and power delivery; (4) enhance forest resilience by retaining large conifer trees (greater than or equal to 30 inches diameter at breast height [DBH]) while allowing some large trees to be removed under specific circumstances to enhance stand heterogeneity and meet project objectives for tree species composition and stand density; (5) effectively manage forest stand density for improved resilience in light of anticipated climate change. The proposed forest plan amendments would apply only to the North Yuba Landscape Project.

The proposed forest plan amendments pertaining to the California spotted owl are based on the Conservation Strategy for the California Spotted Owl in the

Sierra Nevada (USDA Forest Service 2019, referred to as the Conservation Strategy). The Conservation Strategy provides updated management recommendations, based on best available science, that focus on maintaining high-quality spotted owl habitat while increasing habitat resiliency across landscapes.

Substantive Provisions

In accordance with 36 CFR 219.13, the Responsible Official has determined the following specific substantive requirement(s) within §§ 219.8 through 219.11 are directly related to the plan direction being added, modified, or removed by the proposed amendments: 36 CFR 219.8(a)(1): Sustainability, (a) Ecological sustainability. (1) Ecosystem Integrity; 36 CFR 219.9(a)(1) and (2) and (b): Diversity of Plant and Animal Communities, (a) Ecosystem plan components, (1) Ecosystem integrity and (2) Ecosystem diversity and (b) Additional Species-Specific Plan Components; 36 CFR 219.10(a)(1), (5), (7), and (8): Multiple Use, (a) Integrated resource management for multiple use; (1) Aesthetic values, cultural and heritage resources, ecosystem services, fish and wildlife species, forage, geologic features, grazing and rangelands, habitat and habitat connectivity, recreation settings and opportunities, riparian areas, scenery, soil, surface and subsurface water quality, timber, trails, vegetation, viewsheds, and other relevant resources and uses; (5) Habitat conditions, subject to the requirements of § 219.9, for wildlife, fish, and plants commonly enjoyed and used by the public; for hunting, fishing, trapping, gathering, observing, subsistence, and other activities (in collaboration with federally recognized Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments); (7) Reasonably foreseeable risks to ecological, social, and economic sustainability; and (8) System drivers, including dominant ecological processes, disturbance regimes, and stressors, such as natural succession, wildland fire, invasive species, and climate change; and the ability of the terrestrial and aquatic ecosystems on the plan area to adapt to change (§ 219.8).

Preliminary Alternatives

An alternative that does not adopt the proposed project-specific forest plan amendments would be developed and analyzed. Other alternatives would be developed based on scoping input.

Expected Impacts

Among the significant impacts expected to be analyzed in the EIS are: Effects on habitat for the California spotted owl and other old forest-associated species, impacts on roadless area characteristics in IRAs, and impacts on the density and distibution of trees greater than 30 inches DBH.

Responsible Official

The Responsible Official is the Forest Supervisor of the Tahoe National Forest.

Scoping Comments and the Objection Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. In this process, the Agency is requesting comments on potential alternatives and impacts, and identification of any relevant information, studies or analyses of any kind concerning impacts affecting the quality of the human environment. Please visit the North Yuba Forest Partnership website for information about public meetings: *https://yubaforests.org.*

It is important that reviewers provide their comments at such times and in such manner that they are useful to the Agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. Commenting during scoping and any other designated opportunity to comment provided by the Responsible Official will also establish standing to object once the final EIS and Draft Record of Decision has been published. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however, they will not be used to establish standing for the objection process.

Nature of Decision To Be Made

The EIS will support staged decision-making, which will be documented in multiple records of decisions for sub-project areas that have completed surveys. For all decisions, the Responsible Official will consider all reasonable alternatives in light of the purpose and need and environmental effects to decide whether to implement the proposed action, implement one of the other action alternatives, or decide to take no action for one or more of the sub-project areas within the Landscape. In the initial record of decision, the Responsible Official will also determine whether to modify, remove, and add specific forest plan components that would apply to actions in the North Yuba Landscape Resilience Project area during the life of the Project. Subsequent decisions will be made as required surveys are completed and sub-project areas reviewed for possible new information and/or changed circumstances.

Dated: September 10, 2021.

Barnie Gyant,

Associate Deputy Chief, National Forest System.

[FR Doc. 2021–20044 Filed 9–15–21; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the South Carolina Advisory Committee to the U.S. Commission on Civil Rights

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 that the South Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a meeting on Thursday, September 30, 2021, at 12:00 p.m. Eastern Time. The Committee will discuss civil rights concerns in the state.

DATES: The meeting will take place on Thursday, September 30, 2021, from 12:00 p.m.–1:30 p.m. Eastern Time.

ADDRESSES: (Audio/Visual): *https://tinyurl.com/yf2hwdft.* Telephone (Audio Only): Dial 800–360–9505 USA Toll Free; Access code: 433 716 81.

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez, DFO, at *bdelaviez@usccr.gov* or (202) 376–8473.

SUPPLEMENTARY INFORMATION: Members of the public can listen to these discussions. Committee meetings are available to the public through the above call-in number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free

telephone number. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Liliana Schiller at *lschiller@usccr.gov*. Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, South Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

Roll Call
Introduction of Liliana Schiller
Discussion on Subminimum Wages Concept Stage
Next Steps
Open Comment
Adjourn

Dated: September 13, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–20015 Filed 9–15–21; 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; Household Pulse Survey

On July 20, 2021, the Department of Commerce received clearance from the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 to conduct Phase 3.2 of the Household Pulse Survey (OMB No. 0607–1013, Exp. 10/31/23). The Household Pulse Survey was designed to meet a need for timely information associated with household experiences during the Covid–19 pandemic. The Department is committed to ensuring that the data collected by the Household Pulse Survey continue to meet information needs as they may evolve over the course of the pandemic. This notice serves to inform of the Department's intent to request clearance from OMB to make some revisions to the Household Pulse Survey questionnaire. To ensure that the data collected by the Household Pulse Survey continue to meet information needs as they evolve over the course of the pandemic, the Census Bureau submits this Request for Revision to an Existing Collection for a revised Phase 3.3 questionnaire. Specifically, Phase 3.3 includes modifications to questions relating to vaccinations that expand response options for the number of doses and brand of Covid–19 vaccine received; three items asked in prior phases that have been reinstated with regard to unemployment insurance benefits, with a modified reference period; and a question that was reinstated relating to use of public transit and ridesharing.

It is the Department's intention to commence data collection using the revised instrument on or about October 27, 2021. 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. Public comments were previously sought on the Household Pulse Survey via the **Federal Register** on May 19, 2020, June 3, 2020, February 1, 2021, April 13, 2021, and again on June 24, 2021. This notice allows for an additional 30 days for public comments on the proposed revisions.

Agency: U.S. Census Bureau, Department of Commerce.

Title: Household Pulse Survey.

OMB Control Number: 0607–1013.

Form Number(s): None.

Type of Request: Request for a Revision of a Currently Approved Collection.

Number of Respondents: 3,150,000.

Average Hours per Response: 20 minutes.

Burden Hours: 1,039,500.

Needs and Uses: Data produced by the Household Pulse Survey are designed to inform on a range of topics related to households' experiences during the Covid–19 pandemic. Topics to date have included employment, facility to telework, travel patterns, income loss, spending patterns, food and housing security, access to benefits, mental health and access to care, intent to receive the COVID–19 vaccine, and educational disruption (K–12 and post-secondary). The requested revision, if approved by OMB, will add previously approved items to the Phase 3.3 questionnaire. The overall burden change to the public will be insignificant.

The Household Pulse Survey was initially launched in April, 2020 as an experimental project (see *https://www.census.gov/data/experimental-data-products.html*) under emergency clearance from the Office of Management and Budget (OMB) initially granted April 19, 2020; regular clearance was subsequently sought and approved by OMB on October 30, 2020 (OMB No. 0607–1013; Exp. 10/30/2023).

Affected Public: Households.

Frequency: Households will be selected once to participate in a 20-minute survey.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Sections 8(b), 182 and 196.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0607–1013.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–20052 Filed 9–15–21; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–62–2021]

Foreign-Trade Zone (FTZ) 7—Mayaguez, Puerto Rico; Notification of Proposed Production Activity; Lilly del Caribe, Inc. (Pharmaceutical Products); Carolina, Puerto Rico

Lilly del Caribe, Inc., submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Carolina, Puerto Rico within Subzone 7K. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on September 8, 2021.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.* The proposed material would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The proposed foreign-status material is fluoxetine hydrochloride (duty rate 6.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is October 26, 2021.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov.*

Dated: September 10, 2021.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2021–20000 Filed 9–15–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Postponement for the Asia EDGE Business Development Mission to Southeast Asia

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce, International Trade Administration (ITA), is announcing the indefinite postponement of the Asia EDGE (Enhancing Development and Growth through Energy) Business Development Mission to Indonesia and Vietnam, with an optional stop to Thailand, which was previously announced in the **Federal Register** and scheduled for September 16–24, 2021. ITA remains committed to hold the Mission at the soonest possible dates keeping in mind COVID–19 developments.

SUPPLEMENTARY INFORMATION: Notice to postpone the dates and deadlines of the Asia EDGE Business Development Mission to Indonesia and Vietnam published in 86 FR 7705 (February 1, 2021).

Background

The Department of Commerce, International Trade Administration (ITA), is announcing the indefinite postponement of the dates for the executive-led Asia EDGE Business Development Mission which was originally published in 86 FR 7705 (February 1, 2021) and 84 FR 58590 (September 16, 2019). The Asia EDGE Business Development Mission will be indefinitely postponed until new dates can be identified. The Department has been closely monitoring COVID–19 developments and has determined that postponing the mission is necessary to ensure safety, health, and welfare of the participants. When we have determined modified dates for the event, we will inform the public through an updated **Federal Register** announcement. ITA will assume that previously approved applicants wish to continue to be considered as applicants for the postponed mission unless we are informed otherwise.

Contact Information

John Breidenstine, Regional Senior Commercial Officer, U.S. Embassy Bangkok (Thailand), U.S. Department of Commerce, Phone: 66–2–205–5280, Email: *john.breidenstine@trade.gov*

Cathy Gibbons, Global Energy Team Lead, U.S. Commercial Service, Westchester (New York), U.S. Department of Commerce, Phone: 1–914–682–6712, Email: *cathy.gibbons@trade.gov*

Victoria Yue, International Trade Specialist, Office of Energy and Environmental Industries, U.S. Department of Commerce, Phone: 1–202–482–3492, Email: *victoria.yue@trade.gov*

Charles Ranado, Senior Commercial Officer, U.S. Embassy Hanoi (Vietnam), U.S. Department of Commerce, Phone: 84–24–3850–5199, Email: *charles.ranado@trade.gov*

David Nufrio, Deputy Director for Southeast Asia, Global Markets Asia, U.S. Department of Commerce, Phone: 1–202–482–5175, Email: *david.nufrio@trade.gov*

Megan Hyndman, International Trade Specialist, Office of Energy and Environmental Industries, U.S. Department of Commerce, Phone: 1–202–482–4437, Email: *megan.hyndman@trade.gov*

Paul Taylor, Commercial Officer, U.S. Embassy Jakarta (Indonesia), U.S. Department of Commerce, Phone: 62–815–1080–0475, Email: *paul.taylor@trade.gov*

Man Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2021–20028 Filed 9–15–21; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–896]

Magnesium Metal From the People's Republic of China: Final Results of Expedited Third Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this expedited sunset review, the Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on magnesium metal from the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: Applicable September 16, 2021.

FOR FURTHER INFORMATION CONTACT: Deborah Cohen, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4521.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2021, Commerce published the notice of initiation of the third sunset review of the AD *Order*[1] on magnesium metal from China, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On June 7, 2021, Commerce received a notice of intent to participate from US Magnesium LLC (US Magnesium), a domestic producer of magnesium metal and the petitioner in the underlying investigation, within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] US Magnesium claimed domestic interested party status under section

[1] *See Notice of Antidumping Duty Order: Magnesium Metal from the People's Republic of China,* 70 FR 19928 (April 15, 2005) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Review,* 86 FR 29239 (June 1, 2021).

[3] *See* Petitioner's Letter, ''Five-Year (''Sunset'') Review Of Antidumping Duty Order On Magnesium Metal from the People's Republic Of China: Domestic Interested Party Notice Of Intent To Participate,'' dated June 7, 2021.

771(9)(C) of the Act, as a manufacturer of a domestic like product in the United States.[4] On June 8, 2021, US Magnesium timely filed its substantive response within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[5] Commerce received no substantive responses from any other interested parties with respect to the *Order* covered by this sunset review, nor was a hearing requested. On July 22, 2021, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[6] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce is conducting an expedited (120-day) sunset review of the *Order.*

Scope of the Order

The product covered by the *Order* is magnesium metal from China, which includes primary and secondary alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. For a full description of the scope, *see* the Issues and Decision Memorandum.[7]

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum. The issues discussed in the Issues and Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins of dumping likely to prevail if the *Order* were revoked. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.*

Final Results of Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average margins of up to 141.49 percent.

Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely notification of the destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notifications to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.221(c)(5)(ii).

Dated: September 10, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2021–20009 Filed 9–15–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Trademark Petitions

The United States Patent and Trademark Office (USPTO) will submit the following information collection request to the OMB for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The USPTO invites comment on this information collection renewal, which helps the USPTO assess the impact of its information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on May 3, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: United States Patent and Trademark Office, Department of Commerce.

Title: Trademark Petitions.

OMB Control Number: 0651–0061.

Forms Numbers:

- PTO 2303 (Letter of Protest)
- PTO 2304 (Request to Make Special)
- PTO 2305 (Response to Petition to Director Inquiry Letter)
- PTO 2306 (Petition to Make Special)
- PTO 2307 (Request to Restore Filing Date)
- PTO 2308 (Request for Reinstatement)

Type of Review: Extension and revision of a currently approved information collection.

Estimated Number of Respondents: 6,221 respondents per year.

Estimated Number of Responses: 6,221 responses per year.

Estimated Time per Response: The USPTO estimates that it takes the public between 40 minutes (0.67 hours) to 75 minutes (1.25 hours), depending on the complexity of the situation, to gather the necessary information, prepare the appropriate documents, and submit the information to the USPTO.

Estimated Total Annual Respondent Burden Hours: 6,953 hours.

Estimated Total Annual Non-hour Respondent Cost Burden: $393,875.

Needs and Uses: The public uses this information collection for a variety of private business purposes related to establishing and enforcing trademark rights. The USPTO uses the information described in this information collection to process letters of protest, requests to make special, responses to petition inquiry letters, petitions to make special, requests to restore a filing date, and requests for reinstatement. Information relating to the registration of a trademark is made publicly available by the USPTO. The release of information in a letter of protest is controlled and may be available upon request only.

Affected Public: Private sector; individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

This information collection request may be viewed at *www.reginfo.gov.*

[4] *Id.*

[5] *See* Petitioner's Letter, ''Five-Year (''Sunset'') Review Of Antidumping Duty Order On Magnesium Metal from the People's Republic Of China: Domestic Industry Substantive Response,'' dated June 8, 2021.

[6] *See* Commerce's Letter, ''Sunset Reviews Initiated on June 1, 2021,'' dated July 22, 2021.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Final Result of Expedited Third Sunset Review of the Antidumping Duty Order on Magnesium Metal from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice.

Follow the instructions to view Department of Commerce, USPTO information collections currently under review by OMB.

Written comments and recommendations for this 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 information collection or the OMB Control Number 0651–0061.

Further information can be obtained by:

• *Email: InformationCollection@uspto.gov.* Include ''0651–0061 information request'' in the subject line of the message.

• *Mail:* Kimberly Hardy, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Kimberly Hardy,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2021–19996 Filed 9–15–21; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2021–0042]

Extension of the Motion To Amend Pilot Program in Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) is extending the Motion to Amend (MTA) Pilot Program, which was initiated on March 15, 2019, and provides additional options for a patent owner who files an MTA before the Patent Trial and Appeal Board (PTAB). In particular, the MTA Pilot Program provides a patent owner who files an MTA with options to request preliminary guidance from the PTAB on the MTA and to file a revised MTA. The program also provides timelines for briefing to accommodate these options.

DATES: *Effective Date:* September 16, 2021. *Duration:* The MTA Pilot Program will run until September 16, 2022. The USPTO may extend the MTA Pilot Program (with or without modification) on either a temporary or a permanent basis, or may discontinue the program after that date.

FOR FURTHER INFORMATION CONTACT: Jessica Kaiser, Lead Administrative Patent Judge, or Michelle Ankenbrand, Lead Administrative Patent Judge, by telephone at 571–272–9797.

SUPPLEMENTARY INFORMATION: A patent owner in an America Invents Act (AIA) trial proceeding may file an MTA as a matter of right. *See* 35 U.S.C. 316(d)(1), 326(d)(1). After receiving feedback from the public about the PTAB's MTA practice, including some concerns regarding the grant rate of claim amendments in AIA trial proceedings, in October 2018 the USPTO published a Request for Comments in the **Federal Register** seeking written public comments on a proposed amendment process in AIA trials that would involve preliminary guidance from the PTAB on the merits of an MTA and an opportunity for a patent owner to file a revised MTA (Request for Comments on Motion To Amend Practice and Procedures in Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board, 83 FR 54319 (Oct. 29, 2018)). The majority of comments supported the PTAB issuing a preliminary decision in cases involving an MTA, and commenters were almost evenly mixed in supporting or opposing a revised MTA. On March 15, 2019, in response to the stakeholder comments received, the USPTO issued a notice detailing the MTA Pilot Program (Notice Regarding a New Pilot Program Concerning Motion To Amend Practice and Procedures in Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board, 84 FR 9497 (Mar. 15, 2019)).

The MTA Pilot Program provides a patent owner with two options not previously available: (1) A patent owner may choose to receive preliminary guidance from the PTAB on its MTA, and/or (2) A patent owner may choose to file a revised MTA after receiving the petitioner's opposition to the original MTA and/or after receiving the PTAB's preliminary guidance (if requested). If a patent owner does not elect either the option to receive preliminary guidance or the option to file a revised MTA, AIA trial practice, including MTA practice, is essentially unchanged from the practice prior to the MTA Pilot Program.

The USPTO has presented preliminary results of the MTA Pilot Program and continues to track data related to MTAs. The most recent information and statistics related to MTAs are available on the USPTO's website at *www.uspto.gov/patents/ptab/motions-amend-study.*

Based on the preliminary results of the MTA Pilot Program, the USPTO has decided to extend it. The program is hereby extended through September 16, 2022. The USPTO may extend the MTA Pilot Program (with or without modification) on either a temporary or a permanent basis, or may discontinue the program after that date.

The requirements for the MTA Pilot Program remain as set forth in the original notice, without modification at this time.

Andrew Hirshfeld,

Commissioner for Patents, Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2021–20037 Filed 9–15–21; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2021–OS–0097]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 15, 2021.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Human Resources Activity, 4800 Mark Center Drive, Suite 08F05, Alexandria, VA 22350, LaTarsha Yeargins, 571–372–2089.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: National Language Service Corps (NSLC) Application and Assessment; DD Form 2932, DD Form 2933, DD Form 2934; OMB Control Number 0704–0449.

Needs and Uses: The NLSC recruits from the general public and enrolls individuals who would like to volunteer their language skills. The NLSC identifies U.S. citizens who can provide high levels of proficiency in foreign languages and cultural expertise critical to national security for short-term temporary assignments when other resources are not available. The NLSC will fill gaps between requirements of DoD or other departments or agencies of the United States and available language skills where government employees are required or desired. The NLSC will reach out to U.S. citizens (age 18 or over) who can read, listen, speak, and write in English and read, listen, write and speak at least one other specified language, generally at or above skill level 3 as described by the proficiency guidelines of the Federal Interagency Language Roundtable (ILR). The DoD and the Intelligence Community agencies use these guidelines as the basis for language skill requirements identification, position descriptions, readiness indices and language bonus pay systems. Therefore, the ILR proficiency guidelines represent a common metric used by USG agencies as a basis for policy, planning and human capital decisions in operational, mission critical areas where language is required.

Affected Public: Individuals or households.

Annual Burden Hours: 1,020 hours.

Number of Respondents: 1,700.

Responses per Respondent: 3.

Annual Responses: 5,100.

Average Burden per Response: 12 minutes.

Frequency: On occasion.

Dated: September 10, 2021.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–19954 Filed 9–15–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2020–OS–0104]

Submission for OMB Review; Comment Request

AGENCY: National Defense University, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 18, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: National Defense University Security Office Forms; OMB Control Number 0704–NDUS.

Type of Request: Existing collection in use without an OMB Control Number.

Number of Respondents: 385.

Responses per Respondent: 1.

Annual Responses: 385.

Average Burden per Response: 12 minutes.

Annual Burden Hours: 77.

Needs and Uses: The National Defense University (NDU) Security Office is responsible for ensuring personnel and facility security in all situations involving NDU employees. This includes ensuring that an appropriate background investigation is completed and favorably adjudicated in accordance with 32 CFR 156.6—Common access card (CAC) investigation and adjudication. It is also necessary for the NDU Security Office to process visit clearance certification for NDU employees that are visiting outside agencies/components facilities involving access to, or disclosure of, classified information. In accordance with DoDM 5200.01, volume 3 and DoDD 5230.20 at a minimum, data is required to identify an individual, personnel security clearance, access (if appropriate), and need to know for all visitors. NDU Security Office is also responsible for in-processing all permanent personnel (military, civilians, contractors, and foreign partners assigned to the colleges and centers within NDU's area of responsibility). In accordance with HSPD–12 and FIPS 201, the data provided is necessary to process Personal Identity Verification (PIV) credentials to personnel seeking physical access to federally-controlled government facilities. The three forms included in this collection package—the NDU eQIP Nomination Form, NDU Visit Request Form, and NDU Security In-Process Form—facilitate each of these processes, respectively. Respondents to this collection are National Defense University employees who must provide information to the NDU Security Office to facilitate essential personnel, facility, and information security functions. This includes information necessary to complete a background investigation for CAC card issuance (NDU eQIP Nomination Form), information for in-processing and PIV credentialing (NDU Security In-Process Form), and information for visit clearance certification (NDU Visit Request Form).

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal**

Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: September 10, 2021.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison, Officer, Department of Defense.

[FR Doc. 2021–19958 Filed 9–15–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2021–OS–0096]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 15, 2021.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Human Resources Activity, 4800 Mark Center Drive, Suite 08F05, Alexandria, VA 22350, LaTarsha Yeargins, 571–372–2089.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Mandatory Disclosures as Part of Limitations on Terms of Consumer Credit Extended to Service Members and Dependents; OMB Control Number 0704–0444.

Needs and Uses: Title 10 U.S.C. 987, as established by section 670 of the National Defense Authorization Act for Fiscal Year 2007 and as amended by sections 661–663 of the National Defense Authorization Act for Fiscal Year 2013, establishes limitations on terms of consumer credit extended to members of the Armed Forces and their dependents. The purpose of this information collection is to ensure disclosures required by 10 U.S.C. 987(c)(1) and discretionary checks of covered-borrower status stipulated in 32 CFR 232.5(b)(2) by creditors in the process of extending consumer credit.

Affected Public: Individuals or households.

Annual Burden Hours: 1,983,438 hours.

Number of Respondents: 37,500.

Responses per Respondent: 6,347 average (varies widely by type of respondent).

Annual Responses: 238,012,500.

Average Burden per Response: 30 seconds.

Frequency: On occasion.

Dated: September 10, 2021.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–19955 Filed 9–15–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2021–OS–0051]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 18, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Involuntary Allotment Application; DD Form 2653; OMB Control Number 0704–0367.

Type of Request: Regular.

Number of Respondents: 2,783.

Responses per Respondent: 1.

Annual Responses: 2,783.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 1,392 hours.

Needs and Uses: This collection of information is in response to requests for involuntary allotments. Before responding to a request, the responsible government official must have information that identifies both the applicant and the member against whom the involuntary allotment is sought; proves that the request is based on a valid court judgment; shows that the judgment comports with the provision of the Soldiers' and Sailors' Civil Relief Act (SCRA); and enables consideration for whether exigencies of military duty caused the absence of the member from a judicial proceeding upon which the judgment is based. With the exception of information concerning exigencies of military duty, an applicant for an involuntary allotment must provide required information before a

government official can act on the applicant's request. The information from the DD Form 2653 is used by DFAS officials to determine whether an involuntary allotment should be established against the pay of a member of the Armed Forces. The information is used to provide government reviewing officials with necessary information to ensure that both the law and due process considerations are accounted for, including information sufficient for a decision maker to determine that the request is based on a valid judgment and that the SCRA has been complied with.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: September 10, 2021.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–19956 Filed 9–15–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Certificate of Alternate Compliance for USS CANBERRA (LCS 30)

AGENCY: Department of the Navy, DoD.

ACTION: Notice of issuance of Certificate of Alternate Compliance.

SUMMARY: The U.S. Navy hereby announces that a Certificate of Alternate Compliance has been issued for USS CANBERRA (LCS 30). Due to the special construction and purpose of this vessel, the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined it is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the navigation lights provisions of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) without interfering with its special function as a naval ship. The intended effect of this notice is to warn mariners in waters where 72 COLREGS apply.

DATES: This Certificate of Alternate Compliance is effective September 16, 2021 and is applicable beginning August 30, 2021.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Darren E. Myers, JAGC, U.S. Navy, Admiralty Attorney, Office of the Judge Advocate General, Admiralty and Maritime Law Division (Code 11), 1322 Patterson Ave. SE, Suite 3000, Washington Navy Yard, DC 20374–5066, 202–685–5040, or *admiralty@navy.mil*.

SUPPLEMENTARY INFORMATION: Background and Purpose.

Executive Order 11964 of January 19, 1977 and 33 U.S.C. 1605 provide that the requirements of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), as to the number, position, range, or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signaling appliances, shall not apply to a vessel or class of vessels of the Navy where the Secretary of the Navy shall find and certify that, by reason of special construction or purpose, it is not possible for such vessel(s) to comply fully with the provisions without interfering with the special function of the vessel(s). Notice of issuance of a Certificate of Alternate Compliance must be made in the **Federal Register**.

In accordance with 33 U.S.C. 1605, the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, hereby finds and certifies that USS CANBERRA (LCS 30) is a vessel of special construction or purpose, and that, with respect to the position of the following navigational lights, it is not possible to comply fully with the requirements of the provisions enumerated in the 72 COLREGS without interfering with the special function of the vessel:

Annex I, Paragraph 2(a)(i), pertaining to the height of the forward masthead light; Annex I, Paragraph (3)(a), pertaining to the location of the forward masthead light in relation to the forward quarter of the ship; Annex I, Paragraph 2(f)(i) pertaining to obstructions of the aft masthead light; Annex I, Paragraph (3)a, pertaining to the horizontal separation of the masthead lights; Annex I, Paragraph 2(f)(ii) and Annex, Paragraph 3(c), pertaining to the vertical and horizontal position of the task lights in relation to the masthead lights; Annex I, Paragraph 9(b) pertaining to the degree of obstruction of the task lights.

The DAJAG (Admiralty and Maritime Law) further finds and certifies that these navigational lights are in closest possible compliance with the applicable provision of the 72 COLREGS.

Authority: 33 U.S.C. 1605(c), E.O. 11964.

Approved: September 13, 2021.

J.M. Pike,

Commander, Judge Advocate General's Corps, U. S. Navy, Federal Register Liaison Officer.

[FR Doc. 2021–20013 Filed 9–15–21; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

[LPD–28]

Certificate of Alternate Compliance for USS FORT LAUDERDALE

AGENCY: Department of the Navy, DoD.

ACTION: Notice of issuance of Certificate of Alternate Compliance.

SUMMARY: The U.S. Navy hereby announces that a Certificate of Alternate Compliance has been issued for USS FORT LAUDERDALE (LPD–28). Due to the special construction and purpose of this vessel, the Deputy Assistant Judge Advocate General (DAJAG)(Admiralty and Maritime Law) has determined it is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the navigation lights provisions of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) without interfering with its special function as a naval ship. The intended effect of this notice is to warn mariners in waters where 72 COLREGS apply.

DATES: This Certificate of Alternate Compliance is effective September 16, 2021 and is applicable beginning August 30, 2021.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Darren E. Myers, JAGC, U.S. Navy, Admiralty Attorney, Office of the Judge Advocate General, Admiralty and Maritime Law Division (Code 11), 1322 Patterson Ave. SE, Suite 3000, Washington Navy Yard,

DC 20374–5066, 202–685–5040, or *admiralty@navy.mil.*

SUPPLEMENTARY INFORMATION: Background and Purpose. Executive Order 11964 of January 19, 1977 and 33 U.S.C. 1605 provide that the requirements of the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), as to the number, position, range, or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signaling appliances, shall not apply to a vessel or class of vessels of the Navy where the Secretary of the Navy shall find and certify that, by reason of special construction or purpose, it is not possible for such vessel(s) to comply fully with the provisions without interfering with the special function of the vessel(s). Notice of issuance of a Certificate of Alternate Compliance must be made in the **Federal Register**.

In accordance with 33 U.S.C. 1605, the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, hereby finds and certifies that USS FORT LAUDERDALE (LPD–28) is a vessel of special construction or purpose, and that, with respect to the position of the following navigational lights, it is not possible to comply fully with the requirements of the provisions enumerated in the 72 COLREGS without interfering with the special function of the vessel:

Annex I, Paragraph 2(i)(i) pertaining to the vertical position of the task lights in relation to one another; Annex I, Paragraph 3(a), pertaining to the horizontal separation of the masthead lights; Annex I, Paragraph 2 (k), pertaining to the vertical separation of the anchor lights.

The DAJAG (Admiralty and Maritime Law) further finds and certifies that these navigational lights are in closest possible compliance with the applicable provision of the 72 COLREGS.

Authority: 33 U.S.C. 1605(c), E.O. 11964

Approved: September 13, 2021.

J.M. Pike,

Commander, Judge Advocate General's Corps, U. S. Navy, Federal Register Liaison Officer.

[FR Doc. 2021–20011 Filed 9–15–21; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open virtual meeting.

SUMMARY: This notice announces an online virtual combined meeting of the Consent Order Committee and Risk Evaluation and Management Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act requires that public notice of this online virtual meeting be announced in the **Federal Register**.

DATES: Wednesday, October 13, 2021; 1:00 p.m.–4:00 p.m.

ADDRESSES: This meeting will be held virtually via WebEx. To attend, please contact Menice Santistevan by email, *Menice.Santistevan@em.doe.gov,* no later than 5:00 p.m. MT on Friday, October 8, 2021.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 699–0631 or Email: *Menice.Santistevan@em.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Purpose of the Consent Order Committee (COC): It is the mission of the COC to review the Consent Order, evaluate its strengths and weaknesses, and make recommendation as to how to improve the Consent Order. It is also within the mission of this committee to review and ensure implementation of NNMCAB Recommendation 2019–02, Improving the Utility of the Consent Order with Supplementary Information. The COC will work with the NNMCAB Risk Evaluation and Management Committee to review the risk-based approaches used to determine the prioritization of cleanup actions, as well as the ''relative risk ranking'' of the campaigns, targets, and milestones by the NNMCAB, to be recommended for use by the DOE EM Los Alamos Field Office (EM–LA) both within and outside of those activities covered by the Consent Order.

Purpose of the Risk Evaluation and Management Committee (REMC): The REMC provides external citizen-based oversight and recommendations to the DOE EM–LA on human and ecological health risk resulting from historical, current, and future hazardous and radioactive legacy waste operations at Los Alamos National Laboratory (LANL). The REMC will, to the extent feasible, stay informed of DOE EM–LA and LANL's environmental restoration and long-term environmental stewardship programs and plans. The REMC will also work with the NNMCAB COC to provide DOE EM–LA and LANL with the public's desires in determining cleanup priorities. The REMC will prepare recommendations that represent to the best of committee's knowledge and ability to determine, the public's position on human and ecological health risk issues pertaining to direct radiation or contaminant exposure to soils, air, surface and groundwater quality, or the agricultural and ecological environment.

Tentative Agenda:

- Approval of Agenda
- Old Business
- New Business
- Overview of Environmental Justice 40 (EJ40)
- Public Comment Period
- Use Attainability Analysis—Aquatic Life Use Designation for Upper Sandia Canyon Perennial Reach
- Update from Deputy Designated Federal Officer

Public Participation: The online virtual meeting is open to the public. To sign up for public comment, please contact Menice Santistevan by email, *Menice.Santistevan@em.doe.gov,* no later than 5:00 p.m. MT on Friday, October 8, 2021. Written statements may be filed with the Committees either before or within five days after the meeting by sending them to Menice Santistevan at the aforementioned email address. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or telephone number listed above. Minutes and other Board documents are on the internet at: *http://energy.gov/em/nnmcab/meeting-materials*.

Signed in Washington, DC, on September 10, 2021.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2021–19966 Filed 9–15–21; 8:45 am]

BILLING CODE 6450–01–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: EC21–132–000.
Applicants: Minco Wind Energy III, LLC, Minco Wind III, LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Minco Wind III, et al.
Filed Date: 9/10/21.
Accession Number: 20210910–5114.
Comment Date: 5 p.m. ET 10/1/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1119–006; ER10–1123–008.
Applicants: Union Electric Company, Central Illinois Public Service Company.
Description: Notice of Non-Material Change in Status of Ameren Illinois Company, et al.
Filed Date: 9/10/21.
Accession Number: 20210910–5115.
Comment Date: 5 p.m. ET 10/1/21.
Docket Numbers: ER21–2359–001.
Applicants: ITC Midwest LLC.
Description: Compliance filing: Compliance Filing of Executed RS 79 to be effective 9/5/2021.
Filed Date: 9/10/21.
Accession Number: 20210910–5047.
Comment Date: 5 p.m. ET 10/1/21.
Docket Numbers: ER21–2860–000.
Applicants: The Connecticut Light and Power Company.
Description: § 205(d) Rate Filing: Termination of Sterling Property, LLC—CL&P IA to be effective 11/8/2021.
Filed Date: 9/9/21.
Accession Number: 20210909–5142.
Comment Date: 5 p.m. ET 9/30/21.
Docket Numbers: ER21–2861–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA 6183; Queue No. AF1–005 to be effective 8/11/2021.
Filed Date: 9/10/21.
Accession Number: 20210910–5015.
Comment Date: 5 p.m. ET 10/1/21.
Docket Numbers: ER21–2862–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6169; Queue No. AC2–195 to be effective 8/11/2021.
Filed Date: 9/10/21.
Accession Number: 20210910–5030.
Comment Date: 5 p.m. ET 10/1/21.
Docket Numbers: ER21–2863–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA No. 6163; Queue No. AD1–155 to be effective 8/11/2021.
Filed Date: 9/10/21.
Accession Number: 20210910–5033.
Comment Date: 5 p.m. ET 10/1/21.
Docket Numbers: ER21–2864–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: First Revised ISA, Service Agreement No. 5756; Queue No. AC1–110 to be effective 8/11/2021.
Filed Date: 9/10/21.
Accession Number: 20210910–5040.
Comment Date: 5 p.m. ET 10/1/21.
Docket Numbers: ER21–2865–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 6186; Queue No. AF1–003 to be effective 8/11/2021.
Filed Date: 9/10/21.
Accession Number: 20210910–5051.
Comment Date: 5 p.m. ET 10/1/21.
Docket Numbers: ER21–2866–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Visalia CSG LLC GIA and DSA—SA Nos. 1155–1156 to be effective 9/11/2021.
Filed Date: 9/10/21.
Accession Number: 20210910–5073.
Comment Date: 5 p.m. ET 10/1/21.
Docket Numbers: ER21–2867–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Amendment to Service Agreement No. 887 to be effective 8/27/2021.
Filed Date: 9/10/21.
Accession Number: 20210910–5081.
Comment Date: 5 p.m. ET 10/1/21.
Docket Numbers: ER21–2868–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Amended LGIA Mojave 3/4/5 LLC, Mojave 16/17/18, LLC—Mojave 89 SA No. 239 to be effective 11/10/2021.
Filed Date: 9/10/21.
Accession Number: 20210910–5085.
Comment Date: 5 p.m. ET 10/1/21.
Docket Numbers: ER21–2869–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Amended LGIA Mojave 3/4/5 LLC—Mojave 90 to be effective 11/10/2021.
Filed Date: 9/10/21.
Accession Number: 20210910–5088.
Comment Date: 5 p.m. ET 10/1/21.
Docket Numbers: ER21–2870–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: PG&E Quail Energy SGIA (SA 496) to be effective 11/9/2021.
Filed Date: 9/10/21.
Accession Number: 20210910–5092.
Comment Date: 5 p.m. ET 10/1/21.
Docket Numbers: ER21–2871–000.
Applicants: Midcontinent Independent System Operator, Inc., Pioneer Transmission LLC.
Description: Compliance filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35: 2021–09–10_Pioneer 864 Compliance Filing to be effective 1/27/2020.
Filed Date: 9/10/21.
Accession Number: 20210910–5097.
Comment Date: 5 p.m. ET 10/1/21.
Docket Numbers: ER21–2872–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Macon Parkway Solar Project Amended and Restated LGIA Filing to be effective 8/31/2021.
Filed Date: 9/10/21.
Accession Number: 20210910–5102.
Comment Date: 5 p.m. ET 10/1/21.
Docket Numbers: ER21–2873–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Tri-State Solar Project Amended and Restated LGIA Filing to be effective 8/31/2021.
Filed Date: 9/10/21.
Accession Number: 20210910–5105.
Comment Date: 5 p.m. ET 10/1/21.
Docket Numbers: ER21–2874–000.
Applicants: RE Tranquillity LLC.
Description: Initial rate filing: Tranquillity Storage Shared Facilities and Co-Tenancy Agreement Filing to be effective 9/11/2021.
Filed Date: 9/10/21.
Accession Number: 20210910–5112.
Comment Date: 5 p.m. ET 10/1/21.
Docket Numbers: ER21–2875–000.
Applicants: PacifiCorp.
Description: Tariff Amendment: Termination of BPA Construction Agmt—Conversion Ross-Lex-Swift to be effective 11/29/2021.
Filed Date: 9/10/21.
Accession Number: 20210910–5113.
Comment Date: 5 p.m. ET 10/1/21.
Docket Numbers: ER21–2876–000.
Applicants: SP Tranquillity Solar Storage, LLC.
Description: Initial rate filing: Tranquillity Storage Shared Facilities

and Co-Tenancy Agreement Filing to be effective 9/11/2021.

Filed Date: 9/10/21.

Accession Number: 20210910–5121.

Comment Date: 5 p.m. ET 10/1/21.

Docket Numbers: ER21–2877–000.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Compliance Filing and Request for Waiver in ER21–2444, et al. to be effective N/A.

Filed Date: 9/10/21.

Accession Number: 20210910–5161.

Comment Date: 5 p.m. ET 10/1/21.

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 10, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–20027 Filed 9–15–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2897–052, 2931–044, 2932–051, 2941–047, 2942–054, and 2984–123]

Sappi North America, Inc., Presumpscot Hydro LLC, Dichotomy Power Maine LLC; Notice of Amended Application for Transfer of License and Lease of Project Lands 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:* Transfer of License and Lease of Project Lands.

b. *Project Nos.:* 2897–052, 2931–044, 2932–051, 2941–047, 2942–054, and 2984–123.

c. *Date Filed:* June 21, 2021.

d. *Applicants:* Sappi North America, Inc. (transferor), Presumpscot Hydro LLC (co-transferee), Dichotomy Power Maine LLC (co-transferee).

e. *Name of Projects:* Saccarappa, Gambo, Mallison Falls, Little Falls, Dundee, and Eel Weir.

f. *Location:* The Saccarappa, Gambo, Mallison Falls, Little Falls, Dundee and Eel Weir projects are located on the Presumpscot River, in the Towns of Gorham and South Windham and the Westbrook and Standish cities in Cumberland County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contacts:*

For Transferor: Ms. Briana O'Regan, Assistant General Counsel, Sappi North America, Inc., 179 John Roberts Road, South Portland, ME 04106, phone: (207) 854–7070, Email: *briana.oregan@sappi.com.*

For Transferor and Co-Transferee: Mr. Matthew D. Manahan, Counsel for Sappi and Presumpscot Hydro, Pierce Atwood LLP, 254 Commercial St., Portland, ME 04101, phone: (207) 791–1189, Email: *mmanahan@pierceatwood.com.*

For Co-Transferee: Mr. Ian Clark, CEO, Dichotomy Power LLC, 1 Pepsi Way, Suite 6n74, Katonah, NY 10536, phone: (914) 297–7645, Email: *ianc@dichotomycapital.com.*

i. *FERC Contact:* Mrs. Anumzziatta Purchiaroni, (202) 502–6191 or *Anumzziatta.purchiaroni@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/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2897–052, P–2931–044, P–2932–051, P–2941–047, P–2942–054, and P–2984–123. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person 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 resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Transfer and Lease of Project Lands Request:* In the original application filed on October 20, 2020, the applicants requested that the Commission approve the transfer of the following projects from Sappi North America, Inc. (Sappi) to Presumpscot Hydro LLC (Presumpscot) as the sole transferee: Saccarappa Project No. 2897, Gambo Project No. 2931, Mallison Falls Project No. 2932, Little Falls Project No. 2941, Dundee Project No. 2942, and Eel Weir Project No. 2984–123. The Commission issued notice of the application on January 26, 2021. On June 21, 2021, the applicants submitted an amendment to the original application, to add Dichotomy Power Maine LLC (Dichotomy) as a co-transferee. Presumpscot remains a co-transferee. Because the amendment modifies the proposal in the original application, the Commission is issuing notice of the amended application.

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, (866) 208–3676 or TTY, (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, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number(s) 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. 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 10, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–20001 Filed 9–15–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP21–1106–000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: § 4(d) Rate Filing: Amendment to a Negotiated Rate Agreement—Woodriver Energy LLC to be effective 9/9/2021.

Filed Date: 9/9/21.

Accession Number: 20210909–5071.

Comment Date: 5 p.m. ET 9/21/21.

Docket Numbers: RP21–1107–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Non-Conforming Agreement Filing (SoCal) to be effective 11/1/2021.

Filed Date: 9/9/21.

Accession Number: 20210909–5144.

Comment Date: 5 p.m. ET 9/21/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 10, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–20025 Filed 9–15–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9028–011]

Banister Hydro, Inc.; Notice of Intent To File License Application, Filing of Pre-Application Document, Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 9028–011.

c. *Date Filed:* July 28, 2021.

d. *Submitted By:* Banister Hydro, Inc. (Banister Hydro).

e. *Name of Project:* Halifax Hydroelectric Project.

f. *Location:* On the Banister River in Halifax County, Virginia. The project does not occupy any federal land.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Mr. Lewis C. Loon, General Manager, Operations and Maintenance—USA, KEI (USA) Power Management Inc., 423 Brunswick Ave., Gardiner, ME 04345; at (207) 203–3027 or email at *lewis.loon@kruger.com*.

i. *FERC Contact:* Laurie Bauer at (202) 502–6519; or email at *laurie.bauer@ferc.gov*.

j. Banister Hydro filed its request to use the Traditional Licensing Process on July 28, 2021. Banister Hydro provided public notice of its request on July 28, 2021. In a letter dated September 10, 2021, the Director of the Division of Hydropower Licensing approved Banister Hydro's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402. We are also initiating consultation with the Virginia State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Banister Hydro as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Banister Hydro filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed and/or printed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208 3676 (toll free), or (202) 502–8659 (TTY).

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 9028. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration

of the existing license. All applications for license for this project must be filed by July 31, 2024.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: September 10, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–20004 Filed 9–15–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD21–10–000]

Modernizing Electricity Market Design; Supplemental Notice of Technical Conference on Energy and Ancillary Services in the Evolving Electricity Sector

As first announced in the Notice of Technical Conference issued in this proceeding on July 14, 2021, the Federal Energy Regulatory Commission (Commission) will convene a staff-led technical conference in the above-referenced proceeding on October 12, 2021, from approximately 9:00 a.m. to 5:00 p.m. Eastern time. The conference will be held remotely. Attached to this Supplemental Notice is an agenda for the technical conference. Commissioners may attend and participate in the technical conference.

The conference will be open for the public to attend remotely. There is no fee for attendance. Information on this technical conference, including a link to the webcast, will be posted on the conference's event page on the Commission's website (*https://www.ferc.gov/news-events/events/technical-conference-regarding-energy-and-ancillary-services-markets-10122021*) prior to the event. The conference will be transcribed. Transcripts will be available for a fee from Ace Reporting (202–347–3700).

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For more information about this technical conference, please contact Emma Nicholson at *emma.nicholson@ferc.gov* or (202) 502–8741, or Alexander Smith at *alexander.smith@ferc.gov* or (202) 502–6601. For legal information, please contact Adam Eldean at *adam.eldean@ferc.gov* or (202) 502–8047. For information related to logistics, please contact Sarah McKinley at *sarah.mckinley@ferc.gov* or (202) 502–8368. This notice is issued and published in accordance with 18 CFR 2.1.

Dated: September 10, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–20026 Filed 9–15–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6240–064]

Watson Associates; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 6240–064.

c. *Date filed:* August 27, 2021.

d. *Applicant:* Watson Associates.

e. *Name of Project:* Watson Dam Project.

f. *Location:* On the Cocheco River in Strafford County, New Hampshire. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. John Webster, Watson Associates, P.O. Box 178, South Berwick, ME 03908; Phone at (207) 384–5334, or email at *Hydromagnt@gwi.net.*

i. *FERC Contact:* Michael Watts at (202) 502–6123, or *michael.watt@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* October 26, 2021.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* 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: Watson Dam Project (P–6240–064).

m. The application is not ready for environmental analysis at this time.

n. *Project Description:* The existing Watson Dam Project consists of: (1) A 296.75-foot-long, 12-foot-high concrete gravity dam that includes the following sections: (i) A 54-foot-long right abutment; (ii) a 111-foot-long right spillway section with 24-inch-high flashboards and a crest elevation of 110.6 feet mean sea level (msl) at the top of the flashboards; (iii) an 11.5-foot-long, 11.25-foot-wide concrete spillway center pier; (iv) an 80-foot-long left spillway section with 24-inch-high flashboards and a crest elevation of 110.6 feet msl at the top of the flashboards; and (v) a 29-foot-long left abutment; (2) an impoundment with a surface area of 54 acres and a storage capacity of 300 acre-feet at an elevation of 110.6 feet msl; (3) a 29-foot-long, 10-foot-high intake structure in the left

abutment that is equipped with a headgate and trashrack with 2-inch clear bar spacing; (4) a 26-foot-long, 22-foot-wide wood and steel powerhouse containing one 265-kilowatt vertical Flygt submersible turbine-generator unit; (5) a 400-foot-long, 20-foot-wide tailrace that discharges into the Cocheco River; (6) a generator lead, transformer, and transmission line that connect the project to the local utility distribution system; and (7) appurtenant facilities.

Watson Associates voluntarily operates the project in a run-of-river mode using an automatic pond level control system to regulate turbine operation, such that outflow from the project approximates inflow. The project creates an approximately 250-foot-long and a 400-foot-long bifurcated bypassed reaches of the Cocheco River.

Downstream fish passage is provided by a bypass pipe located on the left side of the dam. There is no upstream fish passage facility at the project.

The current license requires a minimum flow release of 83 cubic feet per second (cfs), or inflow to the impoundment, whichever is less from the dam to protect and enhance aquatic resources in the Cocheco River. The average annual generation of the project is approximately 1,100 megawatt-hours.

o. In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this notice, as well as other documents in the proceeding (*e.g.,* license application) via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document (P–6240). For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary) October 2021
Request Additional Information October 2021
Issue Scoping Document 1 for comments January 2022
Issue Acceptance Letter February 2022
Request Additional Information (if necessary) February 2022
Issue Scoping Document 2 March 2022
Issue Notice of Ready for Environmental Analysis March 2022

q. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: September 10, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–20003 Filed 9–15–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–14–000]

Adelphia Gateway, LLC; Notice of Revised Schedule for Environmental Review of the Marcus Hook Electric Compression Project

This notice identifies the Federal Energy Regulatory Commission staff's revised schedule for the completion of the environmental impact statement (EIS) for Adelphia Gateway, LLC's Marcus Hook Electric Compression Project. The *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Marcus Hook Electric Compression Project and Schedule for Environmental Review,* issued on May 27, 2021, identified September 10, 2021 as the final EIS issuance date. However, we are modifying this issuance date based on comments received on the draft EIS and based on Adelphia Gateway, LLC's supplemental information filed on August 25, 2021 to address comments.

Schedule for Environmental Review

Issuance of the final EIS—October 1, 2021
90-day Federal Authorization Decision Deadline—December 30, 2021

If a schedule change becomes necessary, an additional notice will be provided so that the relevant agencies are kept informed of the project's progress.

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' (*i.e.,* CP21–14), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings. This notice is issued and published in accordance with 18 CFR 2.1.

Dated: September 10, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–20002 Filed 9–15–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2020–0005; FRL–7611–02–OW]

Final National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit for Point Source Discharges From the Application of Pesticides; Reissuance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final permit issuance.

SUMMARY: This notice announces issuance by all 10 Environmental Protection Agency (EPA) Regions of the final 2021 National Pollutant Discharge Elimination System (NPDES) pesticide general permit (PGP)—the 2021 PGP. The 2021 PGP, which has an effective date of October 31, 2021, replaces the existing permit (2016 PGP) that expires at midnight on October 31, 2021, and authorizes certain point source discharges from the application of pesticides to waters of the United States in accordance with the terms and conditions described therein. EPA is issuing this permit for five (5) years in all areas of the country where EPA is the NPDES permitting authority.

DATES: The permit becomes effective on October 31, 2021, and will expire at

midnight, October 31, 2026. In accordance with 40 CFR part 23, this permit shall be considered issued for the purpose of judicial review on September 30, 2021. Under section 509(b) of the Clean Water Act (CWA), judicial review of this general permit can be requested by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued. Under section 509(b) of the CWA, the requirements of this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings. Deadlines for submittal of a Notices of Intent (NOI) to be covered, if required, are provided in Part 1.2.3, Table 1–2 of the 2021 PGP.

FOR FURTHER INFORMATION CONTACT: For further information on the final permit, contact the appropriate EPA Regional office listed in Section I.D of this document, email *PGP@epa.gov,* or contact Chelsea Durant, EPA Headquarters, Office of Water, Office of Wastewater Management (4203M), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202–564–2290; email address: *durant.chelsea@epa.gov*. Electronic versions of the 2021 PGP and Fact Sheet are also available on EPA's NPDES website at *https://www.epa.gov/npdes/pesticide-permitting*.

SUPPLEMENTARY INFORMATION: This section is organized as follows:

Table of Contents

I. General Information

A. Does this action apply to me?

You may be affected by this action if you apply pesticides, under the use patterns in Part 1.1.1. of the 2021 PGP, that result in a discharge to waters of the United States in one of the geographic areas identified in Appendix C of the 2021 PGP. Potentially affected entities, as categorized in the North American Industry Classification System (NAICS), may include, but are not limited to:

TABLE 1—ENTITIES POTENTIALLY REGULATED BY THE 2021 PGP

Category	NAICS	Examples of potentially affected entities
Agricultural entities—General agricultural interests, farmers/producers, forestry, and irrigation.	111 Crop Production	Producers of crops mainly for food and fiber, including farms, orchards, groves, greenhouses, and nurseries that have irrigation ditches requiring pest control.
	113110 Timber Tract Operations	The operation of timber tracts for the purpose of selling standing timber.
	113210 Forest Nurseries Gathering of Forest Products.	Growing trees for reforestation and/or gathering forest products, such as gums, barks, balsam needles, rhizomes, fibers, Spanish moss, ginseng, and truffles.
	221310 Water Supply for Irrigation.	Operating irrigation systems.
Pesticide parties (includes pesticide manufacturers, other pesticide users/interests, and consultants).	325320 Pesticide and Other Agricultural Chemical Manufacturing.	Formulation and preparation of agricultural pest control chemicals.
Public health parties (includes mosquito or other vector control districts and commercial applicators that service these).	923120 Administration of Public Health Programs.	Government establishments primarily engaged in the planning, administration, and coordination of public health programs and services, including environmental health activities.
Resource management parties (includes State departments of fish and wildlife, State departments of pesticide regulation, State environmental agencies, and universities).	924110 Administration of Air and Water Resource and Solid Waste Management Programs.	Government establishments primarily engaged in the administration, regulation, and enforcement of air and water resource programs; the administration and regulation of water and air pollution control and prevention programs; the administration and regulation of flood control programs; the administration and regulation of drainage development and water resource consumption programs; and coordination of these activities at intergovernmental levels.
	924120 Administration of Conservation Programs.	Government establishments primarily engaged in the administration, regulation, supervision and control of land use, including recreational areas; conservation and preservation of natural resources; erosion control; geological survey program administration; weather forecasting program administration; and the administration and protection of publicly and privately owned forest lands. Government establishments responsible for planning, management, regulation and conservation of game, fish, and wildlife populations, including wildlife management areas and field stations; and other administrative matters relating to the protection of fish, game, and wildlife are included in this industry.
Utility parties (includes utilities)	221 Utilities	Provide electric power, natural gas, steam supply, water supply, and sewage removal through a permanent infrastructure of lines, mains, and pipes.

B. How can I get copies of this document and other related information?

Docket. EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2020–0005; FRL–7611–02–OW. Although all documents in the docket are listed in an index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available electronically through *www.regulations.gov.* Out of an abundance of caution for members of the public and EPA staff, the EPA Docket Center and Reading Room are currently closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. When the EPA Docket Center and Reading Room reopen, publicly available docket materials will be available in hard copy at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

C. Geographic Coverage

EPA provides permit coverage for classes of point source discharges of pollutants that occur in areas where EPA is the NPDES permitting authority. The geographic coverage of the 2021 PGP is listed in Appendix C of the permit.

D. Who are the EPA regional contacts for this final permit?

For EPA Region 1, contact George Papadopoulos at tel.: (617) 918–1579; or email at *papadopoulos.george@epa.gov.*

For EPA Region 2, contact Stephen Venezia at tel.: (212) 637–3856; or email at *venezia.stephen@epa.gov.* For Puerto Rico, contact Sergio Bosques at tel.: (787) 977–5838 or *bosques.sergio@epa.gov.*

For EPA Region 3, contact Carissa Moncavage at tel.: (215) 814–5798; or email at *moncavage.carissa@epa.gov.*

For EPA Region 4, contact Sam Sampath at tel.: (404) 562–9229; or email at *sampath.sam@epa.gov.*

For EPA Region 5, contact John Colletti at tel.: (312) 886–6106; or email at *colletti.john@epa.gov.*

For EPA Region 6, contact William F. Cooper at tel.: (214) 665–6443 or email at *cooper.williamf@epa.gov.*

For EPA Region 7, contact Alex Owutaka at tel.: (913) 551–7584 or email at: *owutaka.alex@epa.gov.*

For EPA Region 8, contact Margaret Kennedy at tel.: (303) 312–6644 or email at: *kennedy.margaret@epa.gov.*

For EPA Region 9, contact Eugene Bromley at tel.: (415)-972–3510 or email at: *bromley.eugene@epa.gov.*

For EPA Region 10, contact Bilin Basu at tel.: (206) 553–0029 or email at: *basu.bilin@epa.gov.*

II. Background

Section 301(a) of the CWA provides that ''the discharge of any pollutant by any person shall be unlawful'' unless the discharge is in compliance with certain other Sections of the Act. 33 U.S.C. 1311(a). The CWA defines ''discharge of a pollutant'' as ''(A) any addition of any pollutant to navigable waters from any point source and (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.'' 33 U.S.C. 1362(12). A ''point source'' is any ''discernible, confined and discrete conveyance'' but does not include ''agricultural stormwater discharges and return flows from irrigated agriculture.'' 33 U.S.C. 1362(14).

The term ''pollutant'' includes among other things ''garbage . . . chemical wastes, biological materials . . . and industrial, municipal, and agricultural waste discharged into water.'' 33 U.S.C. 1362(6).

A person may discharge a pollutant without violating the Section 301 prohibition by obtaining authorization to discharge (referred to herein as ''coverage'') under a Section 402 NPDES permit (33 U.S.C. 1342). Under Section 402(a), EPA may ''issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding Section 1311(a)'' upon certain conditions required by the Act.

EPA issued the first Pesticide General Permit (''2011 PGP'') on October 31, 2011, in response to the United States Sixth Circuit Court of Appeals ruling vacating EPA's 2006 Final Rule on Aquatic Pesticides. *National Cotton Council of America* v. *EPA,* 553 F.3d 927 (6th Cir. 2009). EPA developed the PGP to control point source discharges of biological pesticides and chemical pesticides that leave a residue into waters of the United States. In 2016, EPA issued the second PGP (2016 PGP). EPA is issuing the 2021 PGP to replace the 2016 PGP which expires at midnight on October 31, 2021. Similar to the 2011 PGP and 2016 PGP, the 2021 PGP provides coverage for certain point source discharges of pollutants to waters of the United States in areas where EPA is the NPDES permitting authority.

EPA published the draft 2021 PGP and accompanying Fact Sheet in the **Federal Register** on January 15, 2021 (86 FR 4070), soliciting comments on the draft permit. EPA also conducted formal consultation with Indian Tribal Governments. EPA received 8 written comment letters on the draft permit. EPA considered all comments received during the comment period in preparing the final permit. EPA responded to all significant comments in the Response to Comment Document which is available as part of the docket for this permit.

III. Summary of the 2021 PGP

A. Summary of Updates to the 2016 PGP and From the Proposed 2021 PGP

While the requirements of the 2021 PGP remain the same as those in the 2016 PGP, some minor updates have been added and are discussed in more detail in the 2021 PGP Fact Sheet. The draft 2021 PGP was proposed on January 15, 2021 and EPA proposed keeping the same conditions and requirements as the 2016 PGP as well as the following changes:

- Removed the out of date NOI provision that provided automatic coverage for all Operators until January 12, 2017.
- Replaced the requirement to use the EPA's eNOI system with EPA's NPDES eReporting Tool (NeT) when preparing and submitting NOIs, NOTs, and annual reports.
- Updated Appendix A, Definitions, Abbreviations, and Acronyms, to include the terms ''Pesticide discharges to waters of the United States from pesticide application'' and ''pesticide residue,'' as defined in 40 CFR 122.2.
- Modified Appendix B, Standard Permit Conditions, to ensure consistency with 40 CFR 122.41.
- Updated Appendix C, Areas Covered, to reflect coverage changes by removing the State of Idaho, and added Indian Country within Virginia and Indiana.

In response to the public comments received and the Endangered Species Act Section 7 consultation, below is a summary of changes to the draft 2021 PGP and discussed in more detail in the 2021 PGP Fact Sheet:

- Clarified Part 1.1.2.4 of the PGP by changing the phrase ''not likely to adversely affect'' and clarified the supporting documentation to be submitted with the Notice of Intent for the eligibility criterion selected. Appendix D, Notice of Intent form, and Appendix I, Endangered Species Procedures, are also updated to reflect

changes made in Part 1.1.2.4 of the permit.

- Corrected Part 1.2.3 of the PGP by adding back the statement that Decision-makers may submit multiple NOIs with different activities.
- Clarified Part 1.6 of the PGP by adding the term ''as a result of a separate federal action.''
- Updated Part 2.2.3.b of the PGP to add cultural methods to the list of management options Decision-maker must evaluate when developing Pest Management Measures for animal pest control.
- Updated Part 9.0 of the PGP to reflect state and tribal Clean Water Act Section 401 certifications.
- Updated Definitions, Abbreviations, and Acronyms, Appendix A of the PGP to:
  - Correct the effective date in the definition for the Decision-maker who is or will be required to submit an NOI.
  - update the definition for the National Marine Fisheries Service (NMFS) Listed Resources of Concern to include the 2021 biological opinion.
  - add the definition for ''Take''.
  - add missing acronyms.
- Updated Appendix C of the PGP, Areas Covered, to remove tribes who denied coverage under the permit, and to remove Texas' oil and gas activities.
- Corrected Appendix F of the PGP, Pesticide Discharge Evaluation Worksheet, by adding an introduction to the coversheet and updating the instructions to point Operators to Part 7.3 of the PGP.
- Updated Appendix I of the PGP, Endangered Species Procedures, to include list of pesticides that a NMFS' biological opinion has determined the labeled use would jeopardize the continued existence of ESA-listed species and/or adversely modify designated critical habitat.

B. Summary of 2021 PGP Terms and Requirements

The 2021 PGP is similar to the 2016 PGP, and is structured in the same nine parts: (1) Coverage under This Permit, (2) Technology-Based Effluent Limitations, (3) Water Quality-Based Effluent Limitations, (4) Monitoring, (5) Pesticide Discharge Management Plan, (6) Corrective Action, (7) Recordkeeping and Annual Reporting, (8) EPA Contact Information and Mailing Addresses, and (9) Permit Conditions Applicable to Specific States (including Territories) and Indian Country. Additionally, as with the 2016 PGP, the 2021 PGP includes nine appendices with additional conditions and guidance for permittees: (A) Definitions, Abbreviations, and Acronyms, (B) Standard Permit Conditions, (C) Areas Covered, (D) Notice of Intent (NOI) form, (E) Notice of Termination (NOT) form, (F) Pesticide Discharge Evaluation Worksheet (PDEW), (G) Annual Reporting Template, (H) Adverse Incident Report Template, and (I) Endangered Species Procedures. A summary of the 2021 PGP's requirements are provided in the 2021 PGP Fact Sheet.

C. 2021 PGP Cost Analysis and Future Cost-Benefit Considerations

The cost analysis accompanying this final permit monetizes and quantifies certain incremental cost impacts of the final permit changes as compared to the 2016 PGP. EPA analyzed each change in the 2021 PGP considering the previous permit's requirements. The objective of the cost analysis is to show where or to what extent the 2021 PGP requirements impose an incremental increase in administrative and compliance costs (such as sampling and monitoring costs) on Operators in relation to costs that are already accounted for in the 2016 PGP. EPA expects no incremental cost impact on entities that will be covered under the 2021 PGP, including small businesses, since the requirements in the permit are substantively the same as those found in both the 2016 PGP as well as the 2011 PGP. For further discussion, see Appendix D of the fact sheet.

More broadly, EPA notes that additional unquantified costs and benefits result from this action. In developing the next PGP (or another NPDES general permit, as appropriate), EPA plans to estimate the broader impacts arising from these actions, including costs and benefits. Estimates under consideration may include: (1) Assessing how costs and benefits are attributed between the PGP and applicable water quality standards (including TMDLs) that may be in effect; (2) developing a new modeling framework to assess how regulated entities understand and implement control measures relating to existing and new permit obligations; (3) examining whether any underlying cost and benefit assumptions need to be updated; (4) examining more broadly how EPA can analyze benefits when developing permits; (5) developing more robust approaches to assessing uncertainties associated with the analytic approaches, including how to quantitatively assess uncertainties of key assumptions; and (6) developing a framework to analyze the effort of cooperative federalism.

IV. Executive Orders 12866 and 13563

The 2021 PGP is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

V. 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 believes that the 2021 PGP will not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples because the requirements in the permit apply equally to all pesticide applicators in areas where EPA is the permitting authority. The provisions in the general permit increase the level of environmental protection for all affected populations.

VI. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in E.O. 13175. It will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. EPA directly implements the NPDES Program, including the 2021 PGP when it is finalized, in Indian country; therefore, in compliance with EPA Policy on Consultation and Coordination with Indian Tribes, EPA consulted with tribal officials early in the process to allow tribes to have meaningful and timely input into the renewal of the PGP. In the course of this consultation, EPA undertook the following activities:

- May 8, 2020—EPA emailed notification letters to tribal leaders initiating consultation and coordination on the renewal of the PGP.
- June 9, 2020—EPA held an informational webinar open to all tribal representatives and reserved the last part of the teleconference for official consultation comments. No official comments were received during the webinar.

EPA did not receive any comments during the formal tribal consultation period. EPA notes that as part of the finalization of this permit, the agency completed Section 401 certification procedures with all applicable tribes where this permit will apply (see Part 9 and Appendix C of the PGP).

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: September 8, 2021.

Deborah A. Szaro,

Acting Regional Administrator, EPA Region 1.

Dated: September 8, 2021.

Javier Laureano,

Director, Water Division, EPA Region 2.

Dated: September 8, 2021.

Carmen R. Guerrero-Pérez,

Director, Caribbean Environmental Protection Division, EPA Region 2 Caribbean Office.

Dated: September 8, 2021.

Catherine A. Libertz,

Director, Water Division, EPA Region 3.

Dated: September 8, 2021.

Jeaneanne M. Gettle,

Director, Water Division, EPA Region 4.

Dated: September 8, 2021.

Tera L. Fong,

Director, Water Division, EPA Region 5.

Dated: September 8, 2021.

Troy Hill,

Deputy Director, Water Division, EPA Region 6.

Dated: September 8, 2021.

Jeffery Robichaud,

Director, Water Division, EPA Region 7.

Dated: September 8, 2021.

Humberto Garcia,

Acting Director, Water Division, EPA Region 8.

Dated: September 8, 2021.

Tomás Torres,

Director, Water Division, EPA Region 9.

Dated: September 8, 2021.

Daniel D. Opalski,

Director, Water Division, EPA Region 10.

[FR Doc. 2021–19965 Filed 9–15–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

[Docket No.: FMCS–2021–3]

Notice to Mediation Agency

AGENCY: Federal Mediation and Conciliation Service (FMCS).

ACTION: 30-Day notice and request for comments.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS), invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection request, Notice to Mediation Agency, (Agency Form F–7). This information collection request was previously approved by the Office of Management Budget (OMB) but has expired. FMCS is requesting a reinstatement without change. The Notice to Mediation Agency, (Agency Form F–7), allows parties to comply with their statutory obligation under the Labor Management Relations Act of 1947. The Agency Form F–7 also allows FMCS to receive these notices from parties to a collective bargaining agreement to comply with its statutory mandate to facilitate mediation.

DATES: Comments must be submitted on or before October 18, 2021.

ADDRESSES: You may submit comments [identified by Docket No.: FMCS–2021–3] through one of the following methods:

- *Email:* Arthur Pearlstein, *apearlstein@fmcs.gov;*
- *Mail:* Arthur Pearlstein, HQ Office of Arbitration, One Independence Square, 250 E St. SW, Washington, DC 20427. Please note that at this time, the FMCS office is not open for visitors and mail is not checked daily. Therefore, we encourage emailed comments.

FOR FURTHER INFORMATION CONTACT: Arthur Pearlstein, 202–606–8103, *apearlstein@fmcs.gov.*

SUPPLEMENTARY INFORMATION: Copies of the agency form are available here. Paper copies are available from the Office of Arbitration Services by emailing Arthur Pearlstein at the email address above. Please ask for Agency Form F–7.

I. Information Collection Request

Agency: Federal Mediation and Conciliation Service.

Form Number: OMB No. 3076–0004.

Type of Request: Reinstatement without change of a previously approved collection.

Affected Entities: Employers and their representatives; and labor unions, their representatives and employees, regarding contract negotiations.

Frequency: This form is completed once for resolution facilitation.

Abstract: Under the Labor Management Relations Act of 1947, 29 U.S.C. 158(d), Congress listed specific notice provisions so that no party to a collective bargaining agreement can terminate or modify a collective bargaining contract, unless the party wishing to terminate or modify the contract sends a written notice to the other party sixty days prior to the expiration date (29 U.S.C. 158(d)(1)) and offers to meet and confer with the other party for the purpose of negotiating a new or modified contract (29 U.S.C. 158(d)(2)). The Act requires that parties notify FMCS within thirty days after such notice of the existence of a bargaining dispute (29 U.S.C. 158(d)(3)). The 1974 amendments to the National Labor Relations Act extended coverage to nonprofit health care institutions, including similar notices to FMCS. 29 U.S.C. 158(d) and (g). To facilitate handling around 27,190 notices a year, FMCS created information collection form F–7. The purpose of this information collection activity is for FMCS to comply with its statutory duty to receive these notices, to facilitate assignment of mediators to assist in labor disputes, and to assist the parties in knowing whether proper notice was given. The information from these notices is sent electronically to the appropriate field manager who assigns the cases to a mediator so that the mediator may contact labor and management quickly, efficiently, and offer dispute resolution services. Either party to a contract may make a request in writing for a copy of the notice filed with FMCS. Form F–7 was created to allow FMCS to gather desired information in a uniform manner. The collection of such information, including the name of the employer or employer association, address and phone number, email address, official contact, bargaining unit and establishment size, location of affected establishment and negotiations, industry, union address, phone number, email address and official contact, contract expiration date or renewal date, whether the notice is filed on behalf of the employer or the union, and whether this is a health care industry notice is critical for reporting and mediation purposes.

Burden: The current total annual burden estimate is that FMCS will receive requests from approximately 27,190 respondents per year. The form takes about 10 minutes to complete.

II. Request for Comments

FMCS solicits comments to:

i. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

ii. Enhance the accuracy of the agency's estimates of the burden of the proposed collection of information.

iii. Enhance the quality, utility, and clarity of the information to be collected.

iv. Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic collection technologies or other forms of information technology.

III. 60-Day Comment Period

This information was previously published in the **Federal Register** on July 13, 2021, allowing for a 60-day public comment period under Document 2021–14823 at 86 FR 36745. FMCS received no comments.

IV. The Official Record

The official records are electronic records.

List of Subjects

Information collection requests.

Dated: September 13, 2021.

Sarah Cudahy,

General Counsel.

[FR Doc. 2021–19991 Filed 9–15–21; 8:45 am]

BILLING CODE 6732–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than October 1, 2021.

A. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *John R. Carlander, Faribault, Minnesota; to retain voting shares of Faribault Bancshares, Inc., and thereby indirectly retain voting shares of State Bank of Faribault, both of Faribault, Minnesota.*

Additionally, Chad R. Koepke, Lakeville, Minnesota; Madelyn L. Carlander, Prior Lake, Minnesota; the Kimberly A. Koepke 1997 Trust, Kimberly A. Koepke, both of Lakeville, Minnesota, and Chad R. Koepke, as co-trustees; The Estate of Richard Carlander, John R Carlander, as personal representative, both of Faribault, Minnesota; the Matthew C. Carlander 1997 Trust, Matthew C. Carlander and John R. Carlander, as co-trustees, all of Faribault, Minnesota; and the John R. Carlander 1997 Trust, Faribault, Minnesota, Madelyn L. Carlander and John R. Carlander, as co-trustees; to join the Carlander/Koepke Family Control Group, a group acting in concert, to retain voting shares of Faribault Bancshares, Inc., and thereby indirectly retain voting shares of State Bank of Faribault.

B. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The Berry Leaf Sewell 2021 Revocable Trust, Berry L. Sewell and Adrienne M. Sewell, as co-trustees, all of Clinton, Oklahoma*; to become members of the Sewell Family Control Group, a group acting in concert, to acquire voting shares of Clinton Bancshares, Inc., and thereby indirectly acquire voting shares of First Bank and Trust Company, both of Clinton, Oklahoma.

Additionally, the Frank A. Sewell IV 1998 Irrevocable Trust, Frank A. Sewell III and First Bank and Trust Company, as co-trustees, all of Clinton, Oklahoma; and Frank A. Sewell IV, Oklahoma City, Oklahoma; to become members of the Sewell Family Control Group, to retain voting shares of Clinton Bancshares, Inc., and thereby indirectly retain voting shares of First Bank and Trust Company.

2. *Mark D. Keeny, as co-trustee of the Amy S. Keeny Revocable Trust, both of Wichita, Kansas*; together with Amy S. Keeny, previously approved co-trustee, to acquire voting shares of King Bancshares, Inc., and thereby indirectly acquire voting shares of Citizens Bank of Kansas, both of Kingman, Kansas.

Board of Governors of the Federal Reserve System, September 13, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–20046 Filed 9–15–21; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than October 18, 2021.

A. Federal Reserve Bank of Cleveland (Bryan S. Huddleston, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *F.N.B. Corporation, Pittsburgh, Pennsylvania;* to acquire Howard Bancorp, Inc., and thereby indirectly acquire Howard Bank, both of Baltimore, Maryland.

B. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *DLP Bancshares, Inc., St. Augustine, Florida;* to become a bank holding company by acquiring Community State Bank Corporation, and thereby indirectly acquiring Community State Bank, both of Starke, Florida.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *First Mid Bancshares Inc., Mattoon, Illinois*; to acquire Delta Bancshares Company, and thereby indirectly acquire Jefferson Bank and Trust Company, both of St. Louis, Missouri.

B. Federal Reserve Bank of St. Louis (Holly A. Rieser, Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Rich Land Bancorp, Inc., Olney, Illinois*; to merge with TNB Bancorp, Inc., and thereby indirectly acquire TNB Bank, both of Tuscola, Illinois.

Board of Governors of the Federal Reserve System, September 13, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–20048 Filed 9–15–21; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on whether the proposed transaction complies with the standards enumerated in the HOLA (12 U.S.C. 1467a(e)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than October 18, 2021.

A. Federal Reserve Bank of Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521. Comments can also be sent electronically to *Comments.applications@phil.frb.org:*

1. *Ponce Bank Mutual Holding Company, Bronx, New York;* to convert from mutual to stock form. As part of the conversion, Ponce Bank Mutual Holding Company and PDL Community Bancorp, an existing mid-tier savings and loan holding company, will cease to exist and Ponce Bank, will become a wholly-owned subsidiary of Ponce Financial Group, Inc., all of the Bronx, New York, a newly formed Maryland corporation, which has applied to become a savings and loan holding company, pursuant to section 10(e) of HOLA, by acquiring Ponce Bank.

Board of Governors of the Federal Reserve System, September 13, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–20045 Filed 9–15–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–new]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before November 15, 2021.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–New–60D and project title for reference, to Sherrette A. Funn, email: *Sherrette.Funn@hhs.gov,* or call (202) 795–7714, the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: The Health Education and Relationships for Teens Study.

Type of Collection: New.

OMB No. 0990–NEW—Office of Population Affairs/OASH.

Abstract: The Office of Population Affairs (OPA), U.S. Department of Health and Human Services (HHS) is requesting 3 years of approval by OMB on a new collection. The Health Education and Relationships for Teens Study (HEARTS) is expected to be a large, multischool random assignment evaluation of the Love Notes curriculum, a popular relationship education curriculum that is widely implemented among federal teen pregnancy prevention and sexual risk avoidance education grantees. The purpose of HEARTS is to provide evidence of effectiveness of the Love Notes curriculum by examining the impacts of Love Notes on youth outcomes such as knowledge about healthy relationships, self-efficacy and motivation to engage in healthy behaviors, interpersonal communication skills, sexual risk behaviors, and health. The study will be conducted in approximately 40 schools, with half randomly assigned to deliver Love Notes to high school youth in health or other classes and the other half in the control condition with business as usual health programming. Data collection activities are planned to begin in spring 2022 in approximately four to six schools, with additional schools brought into the study during the 2022–23 school year. The study will collect youth outcome surveys at baseline and at 6 months and 12 months following the completion of the program. The study will also collect extensive implementation data, including youth

engagement exit ticket surveys after Love Notes sessions, focus groups with youth, program facilitator logs and attendance records, and teacher exit ticket surveys after periodic Love Notes sessions. Study staff will also interview facilitators and site leadership.

ANNUALIZED BURDEN HOUR TABLE

Forms (if necessary)	Respondents (if necessary)	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
Youth Outcome Survey Baseline	Youth	855	1	30/60	428
Youth Outcome Survey—6 Month Follow-up	Youth	727	1	30/60	363
Youth Outcome Survey—12 Month Follow-up	Youth	684	1	30/60	342
Youth Focus Group Topic Guide	Youth	67	1	1	67
Youth Engagement Exit Tickets	Youth	450	13	2/60	195
Teacher Exit Tickets	Classroom teachers	13	4	2/60	2
Fidelity Log	Program Facilitators	7	52	10/60	58
Facilitator Interview Topic Guide	Facilitators	7	1	1	7
Provider/School Leadership Interview Topic Guide.	Provider/School Administrators and Staff.	53	1	1	53
Total			75		1514

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2021–19976 Filed 9–15–21; 8:45 am]

BILLING CODE 4150–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–4040–0001]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before October 18, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain* . Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 0990–New–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: SBIR/STTR Information.

Type of Collection: Revision of A Currently Approved Collection.

OMB No.: 4040–0001.

Abstract: The SBIR (Small Business Innovation Research)/STTR (Small Business Technology Transfer) program is designed to stimulate technological innovation in the private sector by strengthening the role of small business, increasing the commercial application of federally supported research results, as well as fostering and encouraging participation by socially and economically disadvantaged and women-owned small businesses. This form is used by grant applicants to apply for SBIR/STTR-related grants. *Grants.gov* seeks to include a question regarding the use of SBIR/STTR funds for Technical and Business Assistance (TABA).

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Grant Applicants	6,376	1	1	6,376
Total	6,376	1	1	6,376

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2021–19947 Filed 9–15–21; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–xxxx]

Agency Father Generic Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: 60-Day notice of public information collections.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before November 15, 2021.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–New–60D, and project title for reference, to Sherrette Funn, the Reports Clearance Officer, *Sherrette.funn@hhs.gov,* or call 202–795–7714.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Evaluation of the National Hypertension Control Initiative (NHCI).

Type of Collection: (New) Father Generic.

OMB No.: 0990–NEW—OS/Office of Minority Health (OMH).

Abstract: As part of the federal response to COVID–19, the U.S. Department of Health and Human Services (HHS) has funded a new initiative involving two cooperative agreements with the American Heart Association (AHA) to improve COVID–19-related health outcomes by addressing hypertension (high blood pressure) among racial and ethnic minority populations. The $32 million project from the HHS Office of Minority Health (OMH) and the Health Resources and Services Administration (HRSA) Bureau of Primary Health Care will support the implementation of the National Hypertension Control Initiative (NHCI), a national initiative to improve blood pressure control among the most at-risk populations, including racial and ethnic minorities.

The NHCI will support 350 participating HRSA-funded health centers by providing patient and provider education and training for effective hypertension control as well as integration of remote blood pressure monitoring technology into the treatment of hypertension for patients served by participating health centers. The project will also utilize the American Heart Association's targeted media campaigns and existing partnerships with community-based organizations (CBOs) to help reach Black, Latino, and other impacted communities with (i) culturally and linguistically appropriate messages, (ii) access to blood pressure screenings, and (iii) connection to health centers to encourage proper treatment and management of hypertension of screened individuals. This initiative serves to increase the number of adult patients with controlled hypertension and reduce the potential risk of COVID-related health outcomes.

AHA aims to conduct an evaluation to assess the feasibility of the implementation of each of the three NHCI strategies. The findings of this evaluation will inform the improvement and tailoring of AHA's communication approaches about the importance of and techniques for improving blood pressure control, including the benefits of accurately measuring, rapidly acting, and having a patient-focused approach to blood pressure control.

Methodology

The evaluation of the NHCI project will use a mixed methods design, integrating both quantitative and qualitative data collection and analyses. Three main goals of data collection will be to: (1) Track and monitor systems change implementation process information from Community Health Centers (CHCs) on a quarterly basis, (2) assess the capacity of NHCI partners to implement the NHCI project, their needs, the strengths and weaknesses of the systems change approach, and the feasibility of the implementation of the NHCI in their organizations and communities, and (3) assess the reach and success of NHCI project strategies implemented by partners.

ANNUALIZED BURDEN HOUR TABLE

Respondents (if necessary)	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
Community and Social Service Occupations (CBO quarterly data entry into MERD)	53	4	30/60	106
Consumers (ETS health lesson learning questionnaires)	63,600	1	10/60	10,600
Health care professionals (quarterly data entry in MERD)	350	4	1.5	2100
Health care professionals (annual focus group)	16	1	1.5	24
Community and Social Service Occupations (annual focus group)	16	1	1.5	24
Total	*64,035*			12,854

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2021–19975 Filed 9–15–21; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research 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 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 Human Genome Research Institute Special Emphasis Panel; T32—SEP.

Date: October 14, 2021.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20817, 301–594–4280, *mckenneyk@mail.nih.gov*.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Transformative NA Sequencing—SEP.

Date: October 18, 2021.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ken D. Nakamura, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20817, 301–402–0838, *nakamurk@mail.nih.gov*.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Data Science—SEP.

Date: November 9, 2021.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20817, (301) 402–0838, *pozzattr@mail.nih.gov*.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Genetic Counseling—SEP.

Date: November 17, 2021.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20817, (301) 402–0838, *pozzattr@mail.nih.gov*.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Genomic Community Resources—SEP.

Date: November 18, 2021.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ken D. Nakamura, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20817, *nakamurk@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: September 10, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–19960 Filed 9–15–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZP01000.L12200000.EA0000; AZ–SRP–AZA–036683]

Notice of Temporary Closure of Public Lands in Maricopa County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure.

SUMMARY: As authorized under the provisions of the Federal Land Policy and Management Act of 1976, as amended, notice is hereby given that temporary closures will be in effect on public lands administered by the Bureau of Land Management (BLM), Hassayampa Field Office, to minimize the risk of potential collision during operation of the Vulture Mine Off-Road Challenge off-highway vehicle (OHV) race events, authorized under a Special Recreation Permit (SRP).

DATES: The temporary closures will be in effect from 2 p.m., November 5, 2021, through 10 p.m., November 7, 2021, Mountain Standard Time, and again from 2 p.m., January 14, 2022, through 10 p.m., January 16, 2022, Mountain Standard Time.

FOR FURTHER INFORMATION CONTACT: John (Jake) Szympruch, District Chief Ranger; telephone (623) 580–5500; email: *jszympru@blm.gov;* or Tyler Lindsey, Acting Hassayampa Field Manager; Phoenix District Office, 21605 North 7th Avenue, Phoenix, AZ 85027; telephone (623) 580–5500; email: *tlindsey@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individuals during normal business hours. FRS is available 24 hours a day, 7 days a week, to leave a message or question for the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The temporary closures affect certain public lands within the Vulture Mine Recreation Management Zone in Maricopa County, Arizona. This action is necessary to ensure public safety during the Vulture Mine Off-Road Challenge OHV race events.

The temporary closure will be posted at main entry points to this area. Maps of the affected area and other documents associated with this temporary closure are available at the Hassayampa Field Office, which is located at the same address as the Phoenix District Office.

The event is authorized on public land under a SRP and in conformance with the Bradshaw-Harquahala Record of Decision and Approved Resource Management Plan and the Wickenburg Travel Management Plan.

Description of Race Course Closed Area: Areas subject to this temporary closure include the designated race course and public lands within the boundary defined by the race course. The race course begins at the intersection of BLM routes 9092F and 9090C traveling east along 9090C to 9090D going south and then east along 9090D to 9090; continue traveling along 9090 north to 9093A to 9274 traveling

northeast to 9094, traveling southeast to 9195, south on 9195 to Vulture Mine Road (including the camping area to the west and east of the road which varies in width from 70 feet to 268 feet between the signs indicating ''No Vehicles beyond this Point''), then north on 9195 to 9286, then traveling northeast to 9196, to 9192 then to route 9095 traveling north and west to 9089C to 9089A north to 9092B west to 9092 to 9092F and south returning to the beginning intersection with 9090C.

Temporary Closure: The designated race course and all areas within the boundary of the race course as described above are temporarily closed to public entry during the temporary closure period.

Exclusive Use: During the temporary closure, the affected area will be for the exclusive use of Vulture Mine Off-Road Challenge event officials, race participants, and vendors authorized under the event SRP. Anyone without an SRP authorizing use within the temporary closure area during the temporary closure period is prohibited from using the area.

Exceptions: The temporary closures do not apply to Federal, State, and local officers and employees in the performance of their official duties; members of organized rescue or firefighting forces in the performance of their official duties; Vulture Mine Off-Road Challenge event officials, race participants, or vendors authorized under the event SRP.

Enforcement: Any person who violates the temporary closures may be tried before a United States magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. Regulations will be enforced in accordance with 43 CFR 8364.1, and in conjunction with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Arizona law.

Effect of Closure: The entire area encompassed by the designated race course and all areas within the race course as described above and in the time period as described above are temporarily closed to all public use, including pedestrian use and vehicles, unless specifically excepted as described above.

Authority: 43 CFR 8364.1.

Tyler Lindsey,

Acting Field Manager.

[FR Doc. 2021–19988 Filed 9–15–21; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–32595; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before September 4, 2021, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by October 1, 2021.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before September 4, 2021. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

FLORIDA

Dade County

Gaylord House, 5208 Alton Rd., Miami Beach, SG100007060

MISSISSIPPI

Jones County

Laurel Central Historic District (Boundary Increase/Decrease), Roughly bounded by 10th and 13th Sts., 1st Ave., 7th and 5th Sts., and 8th Ave., Laurel, BC100007063

NORTH DAKOTA

Burleigh County

St. George's Episcopal Memorial Church, 601 North 4th St., Bismarck, SG100007065

PUERTO RICO

Aibonito Municipality

La Plata Community Center, (Puerto Rico Reconstruction Administration MPS), PR 173, Km. 1.5, Aibonito vicinity, MP100007066

Additional documentation has been received for the following resources:

MISSISSIPPI

Jones County

Laurel Central Historic District (Additional Documentation), Roughly bounded by 10th and 13th Sts., 1st Ave., 7th and 5th Sts., and 8th Ave., Laurel, AD86001908

NORTH CAROLINA

Jones County

Wyse Fork Battlefield (Additional Documentation), Address Restricted, Kinston vicinity, AD100001301

Lenoir County

Wyse Fork Battlefield (Additional Documentation), Address Restricted, Kinston vicinity, AD100001301

WEST VIRGINIA

Randolph County

Graham-Davis Historic District (Additional Documentation), Generally bounded by Randolph and South Randolph Aves., 11th St., Granny's Ln., and the Tygart Valley R., Elkins, AD100006396

Authority: Section 60.13 of 36 CFR part 60.

Dated: September 8, 2021.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2021–20012 Filed 9–15–21; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1133 (Rescission)]

Certain Unmanned Aerial Vehicles and Components Thereof; Commission Determination To Institute a Rescission Proceeding and Rescind Permanently a Limited Exclusion Order and Cease and Desist Orders; Termination of Rescission Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the ''Commission'') has determined to institute a rescission proceeding and rescind the remedial orders issued in the underlying investigation. This rescission proceeding is hereby terminated.

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 system (''EDIS'') at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 2, 2018, based on a complaint filed by Autel Robotics USA, Inc. (''Autel'') of Bothell, Washington. 83 FR 49575–76 (Oct. 2, 2018). The complaint accuses respondents of violating 19 U.S.C. 1337 of the Tariff Act of 1930, as amended (''Section 337'') by importing into the United States, selling for importation, or selling in the United States after importation certain unmanned aerial vehicles (''UAVs'') and components thereof that infringe one or more of the asserted claims of U.S. Patent Nos. 9,260,184 (''the '184 patent''); 7,979,174 (''the '174 patent''); and 10,044,013 (''the '013 patent''). *Id.* The complaint also alleges the existence of a domestic industry. *Id.* The notice of investigation named the following respondents: SZ DJI Technology Co. Ltd. of Shenzhen, China; DJI Europe B.V. of Barendrecht, Netherlands; DJI Technology Inc. of Burbank, California; iFlight Technology Co., Ltd. (''iFlight'') of Hong Kong; DJI Baiwang Technology Co. Ltd. of Shenzhen, China; DJI Research LLC of Palo Alto, California; DJI Service LLC (''DJI Service'') of Cerritos, California; and DJI Creative Studio LLC of Burbank, California (collectively, ''DJI''). *Id.* The Office of Unfair Import Investigations is not a party to this investigation. *Id.*

On March 2, 2020, the presiding Chief Administrative Law Judge (''CALJ'') issued a combined Initial Determination on Violation of Section 337 (''ID'') and Recommended Determination (''RD'') on Remedy and Bonding, finding a violation of Section 337 by way of infringement of the '184 patent but no violation with respect to the '174 patent or '013 patent.

On May 29, 2020, while the parties' petitions for review were still pending before the Commission, respondents' counsel filed a letter with the Commission attaching four recent Final Written Decisions by the Patent Trial and Appeal Board (''PTAB'') of the U.S. Patent and Trademark Office, finding the challenged claims of the '184, '174, and '013 patents, including the claims asserted in this investigation, to be unpatentable. *See, e.g., SZ DJI Technology Co.* v. *Autel Robotics USA LLC,* Case IPR2019–00343, Final Written Decision Finding All Challenged Claims Unpatentable (PTAB May 21, 2020), *on appeal sub. nom., Autel Robotics USA LLC* v. *SZ DJI Technology Co.,* Appeal No. 20–1987 (Fed. Cir.) (''Appeal No. 20–1987'').

On June 8, 2020, the Commission issued a notice stating that it had determined to partially review certain findings relating to the '184 patent, including the impact, if any, of the PTAB's Final Written Decision finding the '184 patent claims unpatentable. Comm'n Notice at 2–3 (June 9, 2020). The Commission determined not to review the ID's findings that there is no violation with respect to the '174 patent or'013 patent. *Id.*

On August 20, 2020, the Commission affirmed that DJI violated Section 337 by way of infringing claims 1 and 2 of the '184 patent. Comm'n Notice at 3 (Aug. 20, 2020) (''Comm'n Notice''); Comm'n Op. at 8–21 (Aug. 20, 2020) (''Comm'n Op.''). Having found a violation of Section 337, the Commission determined that the appropriate remedy is: (a) A limited exclusion order prohibiting the importation of UAVs and components thereof that are covered by claims 1 or 2 of the '184 patent; (b) cease and desist orders against respondents iFlight and DJI Service; and (c) set a bond in the amount of 11.5 percent of the entered value of the excluded products imported during the period of Presidential review (19 U.S.C. 1337(j)). *See* Comm'n Notice at 3; Comm'n Op. at 26–34. The Commission determined that the public interest factors enumerated in Section 337(d)(1) and (f)(1) do not preclude issuance of the limited exclusion order or cease and desist orders. *Id.* The Commission, however, determined to suspend enforcement of the limited exclusion order, cease and desist orders, and bond provision pending final resolution of the PTAB's Final Written Decision regarding the '184 patent. *See* Comm'n Notice at 4; Comm'n Op. at 35–38.

On October 16, 2020, Autel filed a notice of appeal of the Commission's final determination, including its determination to suspend enforcement of its remedial orders. *See Robotics USA, LLC* v. *ITC,* Appeal No. 21–1082 (''Appeal No. 21–1082''). On November 25, 2020, DJI filed a notice of a cross-appeal of the Commission's final determination. *See SZ DJI Technology Co. Ltd.* v. *ITC,* Appeal No. 21–1363 (''Appeal No. 21–1363''). On December 16, 2020, the Federal Circuit consolidated the appeals, designating Appeal No. 21–1082 as the lead case.

On August 16, 2021, Autel and DJI filed a joint motion to voluntarily dismiss their appeal and cross-appeal. *See Autel Robotics USA LLC* v. *Int'l Trade Comm'n LLC,* Appeal Nos. 2021–1082, –1363, Joint Stipulation to Dismiss Appeals (Aug. 16, 2021). The Federal Circuit granted the motion and dismissed the appeals the following day. *See Autel Robotics USA LLC* v. *Int'l Trade Comm'n,* Appeal Nos. 21–1082, –1363, Order (Fed. Cir. Aug. 17, 2021).

On August 16, 2021, Autel and DJI filed a Joint Petition to Rescind the Limited Exclusion Order and Cease and Desist Orders (''Joint Petition'') that the Commission issued in this investigation, pursuant to 19 U.S.C. 1337(k) and Commission Rule 210.76(a) (19 CFR 210.76(a)). The parties filed both confidential and public versions of the settlement agreements.

Upon consideration of the parties' joint petition, the Commission has determined that the petition complies with Commission rules, *see* 19 CFR 210.76(a)(3), and that there are no extraordinary reasons to deny rescission of the remedial orders. Accordingly, the Commission has determined to institute a rescission proceeding and to permanently rescind the LEO and the CDOs. This rescission proceeding is hereby terminated.

The Commission voted to approve these determinations on September 10, 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 10, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–19977 Filed 9–15–21; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0006]

Agency Information Collection Activities; Proposed eCollection Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Office on Violence Against Women (OVW), Department of Justice, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until October 18, 2021.

FOR FURTHER INFORMATION CONTACT: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Semiannual Progress Report for the Improving Criminal Justice Responses to Sexual Assault, Domestic Violence, Dating Violence, and Stalking Grant Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0006. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes 200 grantees from the Improving Criminal Justice Responses to Sexual Assault, Domestic Violence, Dating Violence, and Stalking Grant Program (ICJR Program) (also known as Grants to Encourage Arrest Policies and Enforcement of Protection Orders) which encourages state, local, and tribal governments and state, local, and tribal courts to treat domestic violence, dating violence, sexual assault, and stalking as serious violations of criminal law requiring the coordinated involvement of the entire criminal justice system. Eligible applicants are states and territories, units of local government, Indian tribal governments, coalitions, victim service providers and state, local, tribal, and territorial courts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 200 respondents (ICJR Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. An ICJR Program grantee will only be required to complete the sections of the form that pertain to its own specific activities (victim services, law enforcement, training, etc.).

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 400 hours, that is 200 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: September 13, 2021.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2021–20029 Filed 9–15–21; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0008]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection; Claim for Damage, Injury, or Death

AGENCY: Civil Division, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Civil Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until October 18, 2021.

FOR FURTHER INFORMATION CONTACT: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Claim for Damage, Injury, or Death.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is CIV SF 95. The applicable component within the Department of Justice is the Civil Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: Businesses or other for-profit, Non-for-profit institutions, and State, Local, or Tribal Governments. Abstract: This form is used by those persons making a claim against the United States Government under the Federal Tort Claims Act.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that there will be 100,000 respondents who will each require 6 hours to respond.

6. *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual burden hours to complete the certification form is 600,000 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: September 13, 2021.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2021–20030 Filed 9–15–21; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; CW–1 Application for Temporary Employment Certification

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before October 18, 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.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL collects information through Form ETA–9142C, and appendices, and Form ETA–9141C, to carry out the responsibilities created for DOL under the Northern Mariana Islands U.S. Workforce Act of 2018. The Workforce Act provides that a petition to employ a nonimmigrant worker under the CW–1 visa classification may not be approved by the U.S. Department of Homeland Security unless the employer has received a temporary labor certification from DOL confirming the following: (1) There are not sufficient U.S. workers in the Commonwealth of the Northern Mariana Islands (CNMI) who are able, willing, qualified, and available at the time and place needed to perform the services or labor involved in the petition; and (2) the employment of a nonimmigrant worker who is the subject of a petition will not adversely affect the wages and working conditions of similarly employed U.S. workers.

For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 19, 2021 (86 FR 27107).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: CW–1 Application for Temporary Employment Certification.

OMB Control Number: 1205–0534.

Affected Public: Private Sector: Business or other for-profits, not-for-profit institutions, and farms.

Total Estimated Number of Respondents: 19,283.

Total Estimated Number of Responses: 159,353.

Total Estimated Annual Time Burden: 71,078 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: September 10, 2021.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2021–19994 Filed 9–15–21; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before October 18, 2021.

ADDRESSES: You may submit your comments including the docket number of the petition by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202–693–9441.
3. *Regular Mail or Hand Delivery:* Regular Mail or Hand Delivery: MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, Attention: Jessica D. Senk, Director, Office of Standards, Regulations, and Variances. MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: Jessica D. Senk, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Senk.Jessica@dol.gov* (email), or 202–693–9441 (facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2021–030–C.

Petitioner: Rosebud Mining Company, 301 Market Street, Kittanning, Pennsylvania (ZIP 16201).

Mine: Heilwood Mine, MSHA ID No. 36–09407, located in Indiana County, Pennsylvania.

Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.1700, as it relates to oil and gas wells at the mine. Specifically, the petitioner is proposing procedures for: Cleaning out and preparing oil and gas wells prior to plugging or re-plugging; procedures for plugging or re-plugging oil or gas wells to the surface; procedures for plugging or replugging oil or gas wells for use as degasification boreholes; alternative procedures for preparing and plugging or re-plugging oil or gas wells; and procedures after approval has been granted to mine through a plugged or re-plugged well.

The petitioner states that:

(a) The Heilwood Mine is opened into the Lower Kittanning Coal seam and accesses the Brookville coal seam via an inter mine slope. Coal is produced in one underground section using a continuous mining machine and a continuous haulage system. The mine operates one production shift per day, 5 to 6 days per week, producing an average of 800 tons of raw coal per day. The mine employs 20 persons underground and 5 on the surface.

(b) The Heilwood Mine uses a room and pillar method of mining. A continuous miner with attached haulage develops main entries. After the mains are established butts, rooms, and/or panels are developed off of the mains. The length of the rooms and/or panels can typically extend a distance of 600 feet to over 6,000 feet, depending on permit boundaries, projections, and conditions.

(c) The Heilwood Mine permit contains oil or gas wells that have been depleted of oil or gas production, producing wells, and oil or gas wells that have not produced oil or gas and may have been plugged. These wells would alter the mining projections for the life of the mine and not allow for the most efficient use of air available to the mine if the barrier established by 30 CFR 75.1700 were to remain in place.

The petitioner proposes the following alternative method:

(a) District Manager's approval is required.

(1) The type of oil or gas well that will be considered under this petition includes wells that have been depleted of oil or gas production, have not produced oil or gas and may have been plugged, and active wells. No Marcellus and Utica wells are contained within the Heilwood Mine Permit and subject to this modification.

(2) A safety barrier of 300 feet in diameter (150 feet between any mined area and a well) shall be maintained around all oil and gas wells (to include: All active, inactive, abandoned, shut-in, and previously plugged wells; water injection wells; and carbon dioxide sequestration wells) until approval to proceed with mining has been obtained from the District Manager. Wells that were drilled into potential oil or gas producing formations that did not produce commercial quantities of either gas or oil (exploratory wells, wildcat wells, or dry holes) are classified as oil or gas wells by MSHA.

(3) Prior to mining within the safety barrier around any well that the mine plans to intersect, the mine operator shall provide to the District Manager a sworn affidavit or declaration executed by a company official stating that all mandatory procedures for cleaning out, preparing, and plugging each gas or oil well have been completed as described by the terms and conditions of the Decision and Order.

(4) The affidavit or declaration must be accompanied by all logs described in (b)(8) and (b)(9) below and any other records which the District Manager may request. The District Manager will review the affidavit or declaration, the logs, and any other records, may inspect

the well itself, and will then determine if the operator has complied with the procedures for cleaning out, preparing, and plugging each well as described by the terms and conditions of the Decision and Order. If the District Manager determines that the procedures have been complied with, he will provide his approval, and the mine operator may then mine within the safety barrier of the well, subject to the terms of the Decision and Order. If well intersection is not planned, the mine operator may request a permit to reduce the 300 foot diameter of the safety barrier that does not include intersection of the well. The District Manager may require documentation that help verify the accuracy of the location of the well in respect to the mine maps and mining projections. This information may include survey closure data, down-hole well deviation logs, historical well intersection location data, and any additional data required by the District Manager. If the District Manager determines that the proposed barrier reduction is reasonable, he will provide his approval, and the mine operator may then mine within the safety barrier of the well.

(5) The terms and conditions of the Decision and Order apply to all types of underground coal mining.

(b) The petitioner proposes to use the following mandatory procedures for cleaning out and preparing vertical oil and gas wells prior to plugging or re-plugging.

(1) The mine operator shall test for gas emissions inside the hole. The District Manager shall be contacted if gas is being produced.

(2) A diligent effort shall be made to clean the well to the original total depth. The mine operator shall contact the District Manager prior to stopping the operation to pull casing or clean out the total depth of the well.

(3) If this depth cannot be reached, and the total depth of the well is less than 4,000 feet, the operator shall completely clean out the well from the surface to at least 200 feet below the base of the lowest mineable coal seam, unless the District Manager requires cleaning to a greater depth.

(4) The operator shall provide the District Manager with all information it possesses concerning the geological nature of the strata and the pressure of the well.

(5) If the total depth of the well is 4,000 feet or greater, the operator shall completely clean out the well from the surface to at least 400 feet below the base of the lowest mineable coal seam. The operator shall remove all material from the entire diameter of the well, wall to wall.

(6) If the total depth of the well is unknown and there is no historical information, the mine operator must contact the District Manager before proceeding.

(7) The operator shall prepare down-hole logs for each well. Logs shall consist of a caliper survey, a gamma log, a bond log, and a deviation survey for determining the top, bottom, and thickness of all coal seams down to the lowest minable coal seam, potential hydrocarbon producing strata, and the location of any existing bridge plug. A journal shall be maintained describing the depth of each material encountered; the nature of each material encountered; bit size and type used to drill each portion of the hole; length and type of each material used to plug the well; length of casing(s) removed, perforated, ripped, or left in place; any sections where casing was cut or milled; and other information concerning cleaning and sealing the well. Invoices, work-orders, and other records relating to all work on the well shall be maintained as part of this journal and provided to MSHA upon request.

(8) When cleaning out the well as provided for in (b) above, the operator shall make a diligent effort to remove all of the casing in the well. After the well is completely cleaned out and all the casing removed, the well should be plugged to the total depth by pumping expanding cement slurry and pressurizing to at least 200 pounds per square inch (psi). If the casing cannot be removed, it must be cut, milled, perforated, or ripped at all mineable coal seam levels to facilitate the removal of any remaining casing in the coal seam by the mining equipment. Any remaining casing shall be perforated or ripped to permit the injection of cement into voids within and around the well.

(9) All casing remaining at mineable coal seam levels shall be perforated or ripped at least every 5 feet from 10 feet below the coal seam to 10 feet above the coal seam. Perforations or rips are required at least every 50 feet from 200 feet (400 feet if the total well depth is 4,000 feet or greater) below the base of the lowest mineable coal seam up to 100 feet above the uppermost mineable coal seam. The mine operator must take appropriate steps to ensure that the annulus between the casing and the well walls are filled with expanding (minimum 0.5% expansion upon setting) cement and contain no voids.

(10) If it is not possible to remove all of the casing, the operator shall notify the District Manager before any other work is performed. If the well cannot be cleaned out or the casing removed, the operator shall prepare the well as described from the surface to at least 200 feet below the base of the lowest mineable coal seam for wells less than 4,000 feet in depth and 400 feet below the lowest mineable coal seam for wells 4,000 feet or greater, unless the District Manager requires cleaning out and removal of casing to a greater depth.

(11) If the operator using a casing bond log can demonstrate to the satisfaction of the District Manager that all annuli in the well are already adequately sealed with cement, the operator will not be required to perforate or rip the casing for that particular well. When multiple casing and tubing strings are present in the coal horizon(s), any remaining casing shall be ripped or perforated and filled with expanding cement as indicated above. An acceptable casing bond log for each casing and tubing string is needed if used in lieu of ripping or perforating multiple strings.

(12) If the District Manager concludes that the completely cleaned-out well is emitting excessive amounts of gas, the operator must place a mechanical bridge plug in the well. It must be placed in a competent stratum at least 200 feet (400 feet if the total well depth is 4,000 feet or greater) below the base of the lowest mineable coal seam, but above the top of the uppermost hydrocarbon-producing stratum, unless the District Manager requires a greater distance. The operator shall provide the District Manager with all information it possesses concerning the geological nature of the strata and the pressure of the well. If it is not possible to set a mechanical bridge plug, an appropriately sized packer may be used. The mine operator shall document what has been done to ''kill the well'' and plug the carbon producing strata.

(12) If the upper-most hydrocarbon-producing stratum is within 300 feet of the base of the lowest minable coal seam, the operator shall properly place mechanical bridge plugs as described in (b)(11) above to isolate the hydrocarbon-producing stratum from the expanding cement plug. The operator shall place a minimum of 200 feet (400 feet if the total well depth is 4,000 feet or greater) of expanding cement below the lowest mineable coal seam, unless the District Manager requires a greater distance.

(c) The petitioner proposes to use the following mandatory procedures for plugging or re-plugging oil or gas wells to the surface. After completely cleaning out the well as specified in (b) above:

(1) The operator shall pump expanding cement slurry down the well to form a plug which runs from at least

200 feet (400 feet if the total well depth is 4,000 feet or greater) below the base of the lowest mineable coal seam (or lower if required by the District Manager) to the surface. The expanding cement will be placed in the well under a pressure of at least 200 psi. Portland cement or a lightweight cement mixture may be used to fill the area from 100 feet above the top of the uppermost mineable coal seam (or higher if required by the District Manager) to the surface.

(2) The operator shall embed steel turnings or other small magnetic particles in the top of the cement near the surface to serve as a permanent magnetic monument of the well. In the alternative, a 4-inch or larger diameter casing, set in cement, shall extend at least 36 inches above the ground level with the American Petroleum Institute (API) well number engraved or welded on the casing. When the hole cannot be marked with a physical monument (*e.g.,* prime farmland), high-resolution GPS coordinates (one-half meter resolution) are required.

(d) The petitioner proposes to use the following mandatory procedures for plugging or re-plugging oil and gas wells for use as degasification wells. After completely cleaning out the well as specified in (b) above, the following procedures shall be utilized:

(1) The operator shall set a cement plug in the well by pumping an expanding cement slurry down the tubing to provide at least 200 feet (400 feet if the total well depth is 4,000 feet or greater) of expanding cement below the lowest mineable coal seam, unless the District Manager requires a greater depth.

(i) The expanding cement will be placed in the well under a pressure of at least 200 psi.

(ii) The top of the expanding cement shall extend at least 50 feet above the top of the coal seam being mined, unless the District Manager requires a greater distance.

(2) The operator shall securely grout into the bedrock of the upper portion of the degasification well a suitable casing in order to protect it. The remainder of this well may be cased or uncased.

(3) The operator shall fit the top of the degasification casing with a wellhead equipped as required by the District Manager in the approved Ventilation Plan. Such equipment may include check valves, shut-in valves, sampling ports, flame arrestor equipment, and security fencing.

(4) Operation of the degasification well shall be addressed in the approved Ventilation Plan. This may include periodic tests of methane levels and limits on the minimum methane concentrations that may be extracted.

(5) After the area of the coal mine that is degassed by a well is sealed or the coal mine is abandoned, the operator must plug all degasification wells using the following procedures:

(i) The operator shall insert a tube to the bottom of the well or, if not possible, to within 100 feet above the coal seam being mined. Any blockage must be removed to ensure that the tube can be inserted to this depth.

(ii) The operator shall set a cement plug in the well by pumping Portland cement or lightweight cement mixture down the tubing until the well is drilled to the surface.

(iii) The operator shall embed steel turnings or other small magnetic particles in the top of the cement near the surface to serve as a permanent magnetic monument of the well. Alternatively, a 4-inch or larger casing, set in cement, shall extend at least 36 inches above the ground level with the API well number engraved or welded on the casing.

(e) The petitioner proposes to use the following mandatory alternative procedures for preparing and plugging or re-plugging oil or gas wells. The following provisions apply to all wells which the operator determines, and with which the MSHA District Manager agrees, cannot be completely cleaned out due to damage to the well caused by subsidence, caving, or other factors.

(1) The operator shall drill a hole adjacent and parallel to the well, to a depth of at least 200 feet (400 feet if the total well depth is 4,000 feet or greater) below the lowest mineable coal seam, unless the District Manager requires a greater depth.

(2) The operator shall use a geophysical sensing device to locate any casing which may remain in the well.

(3) If the well contains casing(s), the operator shall drill into the well from the parallel hole. From 10 feet below the coal seam to 10 feet above the coal seam, the operator shall perforate or rip all casings at least every 5 feet. Beyond this distance, the operator shall perforate or rip at least every 50 feet from at least 200 feet (400 feet if the total well depth is 4,000 feet or greater) below the base of the lowest mineable coal seam up to 100 feet above the seam being mined, unless the District Manager requires a greater distance. The operator shall fill the annulus between the casings and the well wall with expanding (minimum 0.5% expansion upon setting) cement and shall ensure that these areas contain no voids. If the operator, using a casing bond log, can demonstrate to the satisfaction of the District Manager that the annulus of the well is adequately sealed with cement, then the operator will not be required to perforate or rip the casing for that particular well or fill these areas with cement. When multiple casing and tubing strings are present in the coal horizon(s), any remaining casing shall be ripped or perforated and filled with expanding cement as indicated above. An acceptable casing bond log for each casing and tubing string is needed if used in lieu of ripping or perforating multiple strings.

(4) Where the operator determines, and the District Manager agrees, that there is insufficient casing in the well to allow the method outlined in (e)(3) above to be used, the operator shall use a horizontal hydraulic fracturing technique to intercept the original well. From at least 200 feet (400 feet if the total well depth is 4,000 feet or greater) below the base of the lowest mineable coal seam to a point at least 50 feet above the seam being mined, the operator shall fracture in at least six places at intervals to be agreed upon by the operator and the District Manager. The operator shall then pump expanding cement into the fractured well to fill all intercepted voids.

(5) The operator shall prepare down-hole logs for each well. Logs shall consist of a caliper survey, a gamma log, a bond log, and a deviation survey for determining the top, bottom, and thickness of all coal seams down to the lowest minable coal seam, potential hydrocarbon producing strata, and the location of any existing bridge plug. The operator may obtain the logs from the adjacent hole rather than the well if the condition of the well makes it impractical to insert the equipment necessary to obtain the log.

(6) A journal shall be maintained describing the depth of each material encountered; the nature of each material encountered; bit size and type used to drill each portion of the hole; length and type of each material used to plug the well; length of casing(s) removed, perforated, ripped, or left in place; any sections where casing was cut or milled; and other pertinent information concerning sealing the well. Invoices, work orders, and other records relating to all work on the well shall be maintained as part of this journal and provided to MSHA upon request.

(7) After the operator has plugged the well as described in (e)(3) and/or (e)(4) above, the operator shall plug the adjacent hole, from the bottom to the surface, with Portland cement or a lightweight cement mixture. The operator shall embed steel turnings or other small magnetic particles in the top

of the cement near the surface to serve as a permanent magnetic monument of the well. Alternatively, a 4-inch or larger casing, set in cement, shall extend at least 36 inches above the ground level. A combination of the methods outlined in (e)(3) and (e)(4) above may have to be used in a single well, depending upon the conditions of the hole and the presence of casings. The operator and the District Manager shall discuss the nature of each hole. The District Manager may require that more than one method be utilized. The mine operator may submit an alternative plan to the District Manager for approval to use different methods to address wells that cannot be completely cleaned out. The District Manager may require additional documentation and certification by a registered petroleum engineer to support the proposed alternative methods.

(f) The petitioner proposes to use the following mandatory when mining within a 100-foot diameter barrier around a well.

(1) A representative of the operator, a representative of the miners, the appropriate State agency, or the MSHA District Manager may request that a conference be conducted prior to intersecting any plugged or re-plugged well. Upon receipt of any such request, the District Manager shall schedule such a conference. The party requesting the conference shall notify all other parties listed above within a reasonable time prior to the conference to provide opportunity for participation. The purpose of the conference shall be to review, evaluate, and accommodate any abnormal or unusual circumstance related to the condition of the well or surrounding strata when such conditions are encountered.

(2) The operator shall intersect a well on a shift approved by the District Manager. The operator shall notify the District Manager and the miners' representative in sufficient time prior to intersecting a well in order to provide an opportunity to have representatives present.

(3) When using continuous mining methods, the operator shall install drivage sights at the last open crosscut near the place to be mined to ensure intersection of the well. The drivage sites shall not be more than 50 feet from the well.

(4) The operator shall ensure that fire-fighting equipment including fire extinguishers, rock dust, and sufficient fire hose to reach the working face area of the well intersection (when either the conventional or continuous mining method is used) is available and operable during all well intersections. The fire hose shall be located in the last open crosscut of the entry or room. The operator shall maintain the water line to the belt conveyor tailpiece along with a sufficient amount of fire hose to reach the farthest point of penetration on the section.

(5) The operator shall ensure that sufficient supplies of roof support and ventilation materials are available and located at the last open crosscut. In addition, emergency plugs and suitable sealing materials shall be available in the immediate area of the well intersection.

(6) On the shift prior to intersecting the well, the operator shall service all equipment and check it for permissibility. Water sprays, water pressures, and water flow rates used for dust and spark suppression shall be examined and any deficiencies corrected.

(7) The operator shall calibrate the methane monitor(s) on the longwall, continuous mining machine, or cutting machine and loading machine on the shift prior to intersecting the well.

(8) When mining is in progress, the operator shall perform tests for methane with a handheld methane detector at least every 10 minutes from the time that mining with the continuous mining machine is within 30 feet of the well until the well is intersected. During the actual cutting process, no individual shall be allowed on the return side until the well intersection has been completed and the area has been examined and declared safe. The operator's most current approved Ventilation Plan will be followed at all times unless the District Manager deems a greater air velocity for the intersect is necessary.

(9) When using continuous or conventional mining methods, the working place shall be free from accumulations of coal dust and coal spillages, and rock dust shall be placed on the roof, rib, and floor to within 20 feet of the face when intersecting the well. When the well is intersected, the operator shall deenergize all equipment, and thoroughly examine and determine the area to be safe before permitting mining to resume.

(10) After a well has been intersected and the working place determined to be safe, mining shall continue inby the well a sufficient distance to permit adequate ventilation around the area of the well.

(11) If the casing is cut or milled at the coal seam level, the use of torches should not be necessary. However, in rare instances, torches may be used for inadequately or inaccurately cut or milled casings. No open flame shall be permitted in the area until adequate ventilation has been established around the well bore and methane levels of less than 1.0% are present in all areas that will be exposed to flames and sparks from the torch. The operator shall apply a thick layer of rock dust to the roof, face, floor, ribs, and any exposed coal within 20 feet of the casing prior to the use of torches.

(12) Non-sparking (brass) tools will be located on the working section and will be used exclusively to expose and examine cased wells.

(13) No person shall be permitted in the area of the well intersection except those actually engaged in the operation.

(14) The operator shall alert all personnel in the mine to the planned intersection of the well prior to their going underground if the planned intersection is to occur during their shift. This warning shall be repeated for all shifts until the well has been mined through.

(15) The well intersection shall be under the direct supervision of a certified individual. Instructions concerning the well intersection shall be issued only by the certified individual in charge.

(16) If the mine operator cannot find the well in the middle of the panel or room and misses the anticipated intersection, mining shall cease and the District Manager shall be notified.

(17) The provisions of the Decision and Order do not impair the authority of representatives of MSHA to interrupt or halt the well intersection and issue a withdrawal order when they deem it necessary for the safety of the miners. MSHA may order an interruption or cessation of the well intersection and/or a withdrawal of personnel by issuing either a verbal or written order to that effect to a representative of the operator. Operations in the affected area of the mine may not resume until a representative of MSHA permits resumption. The mine operator and miners shall comply with verbal or written MSHA orders immediately. All verbal orders shall be committed to writing within a reasonable time as conditions permit.

(18) A copy of the Decision and Order shall be maintained at the mine and be available to the miners.

(19) If the well is not plugged to the total depth of all minable coal seams identified in the core hole logs, any coal seams beneath the lowest plug will remain subject to the barrier requirements of 30 CFR 75.1700 should those coal seams be developed in the future.

(20) All necessary safety precautions and safe practices according to industry

standards, required by MSHA regulations and State regulatory agencies having jurisdiction over the plugging site will be followed to provide the upmost protection to the miners involved in the process.

(21) All miners involved in the plugging or re-plugging operations will be trained on the contents of the Decision and Order prior to starting the process, and a copy of the Decision and Order will be posted at the well site until the plugging or re-plugging has been completed.

(22) Mechanical bridge plugs should incorporate the best available technologies that are either required or recognized by the State regulatory agency and/or oil and gas industry.

(23) Within 30 days after the Decision and Order becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. These proposed revisions shall include initial and refresher training on compliance with the terms and conditions stated in the Decision and Order. The operator shall provide all miners involved in well intersection with training on the requirements of the Decision and Order prior to mining within 150 feet of the next well intended to be mined through.

(24) The responsible person required under 30 CFR 75.1501 Emergency Evacuations is responsible for well intersection emergencies. The well intersection procedures should be reviewed by the responsible person prior to any planned intersection.

(25) Within 30 days after the Decision and Order becomes final, the operator shall submit proposed revisions for its approved mine emergency evacuation and firefighting program of instruction required under 30 CFR 75.1502. The operator will revise the program of instruction to include the hazards and evacuation procedures to be used for well intersections. All underground miners will be trained in this revised plan within 30 days of submittal. The procedure as specified in 30 CFR 48.3 for approval of proposed revisions to already approved training plans shall apply.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Jessica Senk,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2021–19992 Filed 9–15–21; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Wage and Hour Division

Minimum Wage for Federal Contracts Covered by Executive Order 13658, Notice of Rate Change in Effect as of January 1, 2022

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Wage and Hour Division (WHD) of the U.S. Department of Labor (the Department) is issuing this notice to announce the applicable minimum wage rate for workers performing work on or in connection with federal contracts covered by Executive Order 13658, Establishing a Minimum Wage for Contractors (the Executive Order or the Order), beginning January 1, 2022. Beginning on that date, the Executive Order 13658 minimum wage rate that generally must be paid to workers performing work on or in connection with covered contracts will increase to $11.25 per hour, while the required minimum cash wage that generally must be paid to tipped employees performing work on or in connection with covered contracts will increase to $7.90 per hour. Covered contracts that are entered into on or after January 30, 2022, or that are renewed or extended (pursuant to an option or otherwise) on or after January 30, 2022, will be generally subject to a higher $15.00 minimum wage rate established by Executive Order 14026 of April 27, 2021, Increasing the Minimum Wage for Federal Contractors.

DATES: These new Executive Order 13658 rates shall take effect on January 1, 2022.

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Executive Order 13658 Background and Requirements for Determining Annual Increases to the Minimum Wage Rate

Executive Order 13658 was signed on February 12, 2014, and raised the hourly minimum wage for workers performing work on or in connection with covered federal contracts to $10.10 per hour, beginning January 1, 2015, with annual adjustments thereafter in an amount determined by the Secretary pursuant to the Order. *See* 79 FR 9851. The Executive Order directed the Secretary to issue regulations to implement the Order's requirements. *See* 79 FR 9852. Accordingly, after engaging in notice-and-comment rulemaking, the Department published a Final Rule on October 7, 2014 to implement the Executive Order. *See* 79 FR 60634. The final regulations, set forth at 29 CFR part 10, established standards and procedures for implementing and enforcing the minimum wage protections of the Order.

Executive Order 13658 and its implementing regulations require the Secretary to determine the applicable minimum wage rate for workers performing work on or in connection with covered contracts on an annual basis, beginning January 1, 2016. *See* 79 FR 9851; 29 CFR 10.1(a)(2), 10.5(a)(2), 10.12(a). Sections 2(a) and (b) of the Order establish the methodology that the Secretary must use to determine the annual inflation-based increases to the minimum wage rate. *See* 79 FR 9851. These provisions, which are implemented in 29 CFR 10.5(b)(2), explain that the applicable minimum wage determined by the Secretary for each calendar year shall be:

- Not less than the amount in effect on the date of such determination;
- Increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) (United States city average, all items, not seasonally adjusted), or its successor publication, as determined by the Bureau of Labor Statistics (BLS); and
- Rounded to the nearest multiple of $0.05.

Section 2(b) of Executive Order 13658 further provides that, in calculating the annual percentage increase in the CPI–W for purposes of determining the new minimum wage rate, the Secretary shall compare such CPI–W for the most recent month, quarter, or year available (as selected by the Secretary prior to the first year for which a minimum wage is in effect) with the CPI–W for the same month in the preceding year, the same quarter in the preceding year, or the preceding year, respectively. *See* 79 FR 9851. To calculate the annual percentage increase in the CPI–W, the Department elected in its Final Rule implementing the Executive Order to compare such CPI–W for the most recent year available with the CPI–W for

the preceding year. *See* 29 CFR 10.5(b)(2)(iii). In its Final Rule, the Department explained that it decided to compare the CPI–W for the most recent year available (instead of using the most recent month or quarter, as allowed by the Order) with the CPI–W for the preceding year, ''to minimize the impact of seasonal fluctuations on the Executive Order minimum wage rate.'' 79 FR 60666.

Once a determination has been made with respect to the new minimum wage rate, Executive Order 13658 and its implementing regulations require the Secretary to notify the public of the applicable minimum wage rate on an annual basis at least 90 days before any new minimum wage takes effect. *See* 79 FR 9851; 29 CFR 10.5(a)(2), 10.12(c)(1). The regulations explain that the Administrator of the Department's Wage and Hour Division (the Administrator) will publish an annual notice in the **Federal Register** stating the applicable minimum wage rate at least 90 days before any new minimum wage takes effect. *See* 29 CFR 10.12(c)(2)(i). Additionally, the regulations state that the Administrator will provide notice of the Executive Order minimum wage rate on Wage Determinations OnLine (WDOL), *http://www.wdol.gov,* or any successor site;[1] on all wage determinations issued under the Davis-Bacon Act (DBA), 40 U.S.C. 3141 *et seq.,* and the Service Contract Act (SCA), 41 U.S.C. 6701 *et seq.;* and by other means the Administrator deems appropriate. *See* 29 CFR 10.12(c)(2)(ii)–(iv).

Section 3 of Executive Order 13658 requires contractors to pay tipped employees covered by the Order performing on or in connection with covered contracts an hourly cash wage of at least $4.90, beginning on January 1, 2015, provided the employees receive sufficient tips to equal the Executive Order minimum wage rate under section 2 of the Order when combined with the cash wage. *See* 79 FR 9851–52; 29 CFR 10.28(a). The Order further provides that, in each succeeding year, beginning January 1, 2016, the required cash wage must increase by $0.95 (or a lesser amount if necessary) until it reaches 70 percent of the Executive Order minimum wage. *Id.* For subsequent years, the cash wage for tipped employees will be 70 percent of the Executive Order minimum wage rounded to the nearest $0.05. *Id.* When a contractor is using a tip credit to meet a portion of its wage obligations under the Executive Order, the amount of tips received by the employee must equal at least the difference between the cash wage paid and the Executive Order minimum wage; if the employee does not receive sufficient tips, the contractor must increase the cash wage paid so that the cash wage in combination with the tips received equals the Executive Order minimum wage. *Id.*

The Executive Order 13658 minimum wage and the cash wage required for tipped employees are currently $10.95 and $7.65 per hour, respectively. The Department announced these rates on August 31, 2020, 85 FR 53850, and the rates took effect on January 1, 2021.

II. Effect of Executive Order 14026

On April 27, 2021, President Joseph R. Biden, Jr. signed Executive Order 14026, Increasing the Minimum Wage for Federal Contractors. 86 FR 22835. Beginning January 30, 2022, Executive Order 14026 establishes a $15.00 hourly minimum wage for the same types of contracts with the Federal Government that are covered by Executive Order 13658. However, Executive Order 14026 only applies to contracts with the Federal Government that are entered into on or after January 30, 2022, or that are renewed or extended (pursuant to an exercised option or otherwise) on or after January 30, 2022. For some amount of time, the Department therefore anticipates that there will be some existing contracts with the Federal Government that do not qualify as a covered ''new contract'' for purposes of Executive Order 14026 and thus will remain subject to the minimum wage requirements of Executive Order 13658.

The Department anticipates that, in the relatively near future, essentially all covered contracts with the Federal Government will qualify as ''new'' contracts under Executive Order 14026 and be subject to its higher minimum wage rate. Until such time, however, Executive Order 13658 and its regulations at 29 CFR part 10 must remain in place. The Department will continue announcing annual updates to Executive Order 13658's minimum wage rates for existing contracts still covered by Executive Order 13658.

III. The 2022 Executive Order 13658 Minimum Wage Rate

Using the methodology set forth in Executive Order 13658 and summarized above, the Department must first determine the annual percentage increase in the CPI–W (United States city average, all items, not seasonally adjusted), as published by BLS, to determine the new Executive Order 13658 minimum wage rate. In calculating the annual percentage increase in the CPI–W, the Department must compare the CPI–W for the most recent year available with the CPI–W for the preceding year. The Department therefore compares the percentage change in the CPI–W between the most recent year (*i.e.,* the most recent four quarters) and the prior year (*i.e.,* the four quarters preceding the most recent year). The Department then increases the current Executive Order minimum wage rate by the resulting annual percentage change and rounds to the nearest multiple of $0.05.

In order to determine the Executive Order 13658 minimum wage rate beginning January 1, 2022, the Department therefore calculated the CPI–W for the most recent year by averaging the CPI–W for the four most recent quarters, which consist of the first two quarters of 2021 and the last two quarters of 2020 (*i.e.,* July 2020 through June 2021). The Department then compared that data to the average CPI–W for the preceding year, which consists of the first two quarters of 2020 and the last two quarters of 2019 (*i.e.,* July 2019 through June 2020). Based on this methodology, the Department determined that the annual percentage increase in the CPI–W (United States city average, all items, not seasonally adjusted) was 2.567 percent. The Department then applied that annual percentage increase of 2.567 percent to the current Executive Order hourly minimum wage rate of $10.95, which resulted in a wage rate of $11.231 (($10.95 × 0.02567) + $10.95); however, pursuant to the Executive Order, that rate must be rounded to the nearest multiple of $0.05.

The new Executive Order 13658 minimum wage rate that must generally be paid to workers performing on or in connection with covered contracts beginning January 1, 2022 is therefore $11.25 per hour.

IV. The 2022 Executive Order 13658 Minimum Cash Wage for Tipped Employees

As noted above, section 3 of Executive Order 13658 provides a methodology to determine the amount of the minimum hourly cash wage that must be paid to tipped employees performing on or in connection with covered contracts. Because the cash wage for tipped employees reached 70 percent of the Executive Order 13658 minimum wage beginning on January 1, 2018 (*i.e.,* $7.25 per hour compared to $10.35 per hour), future updates to the cash wage for tipped employees must continue to set the rate at 70 percent of the full

[1] *WDOL.gov* moved to *https://alpha.sam.gov/content/wage-determinations.* This website is the authoritative and single location for obtaining appropriate Service Contract Act and Davis-Bacon Act wage determinations for each official contract action.

Executive Order 13658 minimum wage. Seventy percent of the new Executive Order 13658 minimum wage rate of $11.25 is $7.875. Because the Executive Order provides that the rate must be rounded to the nearest $0.05, the new minimum hourly cash wage for tipped workers performing on or in connection with covered contracts beginning January 1, 2022 is therefore $7.90 per hour.

V. Appendix

The Appendix to this notice provides a comprehensive chart of the CPI–W data published by BLS that the Department used to calculate the new Executive Order 13658 minimum wage rate based on the methodology explained herein.

Dated: September 9, 2021.

Jessica Looman,

Acting Administrator, Wage and Hour Division.

Appendix: Data Used To Determine Executive Order 13658 Minimum Wage Rate Effective January 1, 2022

Data Source: Consumer Price Index for Urban wage Earners and Clerical Workers (CPI–W) (United States city average, all items, not seasonally adjusted).

	Quarter 3			Quarter 4			Quarter 1			Quarter 2			Annual average
2019Q3 to 2020Q2	250.236	250.112	250.251	250.894	250.644	250.452	251.361	251.935	251.375	249.515	249.521	251.054	250.6125
2020Q3 to 2021Q2	252.636	253.597	254.004	254.076	253.826	254.081	255.296	256.843	258.935	261.237	263.612	266.412	257.0463
Annual Percentage Increase ..	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2.567%

[FR Doc. 2021–19995 Filed 9–15–21; 8:45 am]

BILLING CODE 4510–27–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Survey of Multiemployer Pension Plan Withdrawal Liability Information

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval of information collection.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval under the Paperwork Reduction Act, of a survey of terminated and insolvent multiemployer pension plans to obtain withdrawal liability information. PBGC needs the withdrawal liability information to estimate its multiemployer program liabilities for purposes of its financial statements. This notice informs the public of PBGC's request and solicits public comment on the collection of information.

DATES: Comments must be submitted on or before October 18, 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.

A copy of the request will be posted on PBGC's website at *www.pbgc.gov/prac/laws-and-regulation/federal-register-notices-open-for-comment.* It may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC, 1200 K Street NW, Washington, DC 20005–4026; or, calling 202–229–4040 during normal business hours (TTY users may call the Federal Relay Service toll-free at 800–877–8339 and ask to be connected to 202–229–4040).

FOR FURTHER INFORMATION CONTACT: Hilary Duke (*duke.hilary@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026, 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: When a contributing employer withdraws from an underfunded multiemployer pension plan, the plan sponsor assesses withdrawal liability against the employer. The plan sponsor is required to determine and collect withdrawal liability in accordance with section 4219 of the Employee Retirement Income Security Act of 1974 (ERISA). The plan sponsor assesses withdrawal liability by issuing a notice to an employer, including the amount of the employer's liability and a schedule of payments. PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) requires the plan sponsor to file with PBGC a certification that notices have been provided to employers.

PBGC collects information about withdrawal liability that is owed by withdrawn employers of terminated [1] and insolvent [2] multiemployer pension plans. PBGC distributes annual surveys that newly insolvent plans receiving financial assistance and newly terminated plans not yet receiving financial assistance are required to complete and return to PBGC. Smaller plans with less than 500 participants are not required to complete the survey. PBGC needs the information from the survey about withdrawal liability payments and settlements, and whether employers have withdrawn from the plan but have not yet been assessed withdrawal liability, to estimate with more precision PBGC's multiemployer program liabilities for purposes of its financial statements.[3] PBGC also uses the information for its Multiemployer Pension Insurance Modelling System assumptions on collection of withdrawal liability. Information provided to PBGC is confidential to the extent provided in the Freedom of Information Act and the Privacy Act.

The existing collection of information was approved under OMB control number 1212–0071 (expires November 30, 2021). On June 23, 2021, PBGC published in the **Federal Register** (at 86

[1] Under section 4041A(f)(2) of ERISA, PBGC may prescribe reporting requirements for terminated multiemployer pension plans, which PBGC considers appropriate to protect the interests of plan participants and beneficiaries or to prevent unreasonable loss to the corporation.

[2] Under section 4261(b)(1) of ERISA, PBGC provides financial assistance under such conditions as the corporation determines are equitable and are appropriate to prevent unreasonable loss to the corporation with respect to the plan.

[3] Section 4008 of ERISA requires the corporation, as soon as practicable after the close of each fiscal year, to transmit a report to the President and the Congress, including financial statements setting forth the finances of the corporation at the end of the fiscal year and the result of its operations (including the source and application of its funds) for the fiscal year.

FR 32982) a notice informing the public of its intent to request an extension of this collection of information. No comments were received. PBGC is requesting that OMB extend approval of the collection for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC estimates that the survey will be sent to about 6 newly terminated and insolvent plans per year. PBGC estimates that each survey would require approximately 20 hours to complete by a combination of pension fund office staff (50%) and outside professionals (attorneys and actuaries) (50%). PBGC estimates a total hour burden of 60 hours (based on 10 hours of pension fund office time per plan). The estimated dollar equivalent of this hour burden, based on an assumed hourly rate of $75 for administrative, clerical, and supervisory time is $4,500. PBGC estimates a total cost burden for the withdrawal liability survey of $24,000 (based on a 60 attorney and actuary hours (10 hours × 6 plans) assuming an average hourly rate of $400).

Issued in Washington, DC.

Hilary Duke,

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

[FR Doc. 2021–19981 Filed 9–15–21; 8:45 am]

BILLING CODE 7709–02–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Mergers and Transfers Between Multiemployer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval of information collection.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of a collection of information contained in PBGC's regulation on Mergers and Transfers Between Multiemployer Plans. This notice informs the public of PBGC's request and solicits public comment on the collection of information.

DATES: Comments must be submitted on or October 18, 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.

A copy of the request will be posted on PBGC's website at *www.pbgc.gov/prac/laws-and-regulation/federal-register-notices-open-for-comment.* It may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC, 1200 K Street NW, Washington, DC 20005–4026; or, calling 202–229–4040 during normal business hours (TTY users may call the Federal Relay Service toll-free at 800–877–8339 and ask to be connected to 202–229–4040).

FOR FURTHER INFORMATION CONTACT: Hilary Duke (*duke.hilary@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026, 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: Section 4231(a) and (b) of the Employee Retirement Income Security Act of 1974 (ERISA) requires plans that are involved in a merger or transfer to give PBGC 120 days notice of the transaction and provides that if PBGC determines that specified requirements are satisfied, the transaction will be deemed not to be in violation of ERISA section 406(a) or (b)(2) (dealing with prohibited transactions).

PBGC's regulation on Mergers and Transfers Between Multiemployer Plans (29 CFR part 4231) sets forth the procedures for giving notice of a merger or transfer under section 4231 and for requesting a compliance determination. The regulations specify the information that must be included in a merger or transfer notice. A request for a compliance determination must provide additional information to enable PBGC to make an explicit finding that the merger/transfer requirements have been satisfied.

Section 4231(e) of ERISA clarifies PBGC's authority to facilitate a merger (a ''facilitated merger'') of two or more multiemployer plans if certain statutory requirements are met. For purposes of section 4231(e), ''facilitation'' may include training, technical assistance, mediation, communication with stakeholders, and support with related requests to other government agencies. In addition, subject to the requirements of section 4231(e)(2), PBGC may provide financial assistance (within the meaning of section 4261 of ERISA) to facilitate a merger (a ''financial assistance merger'') it determines is necessary to enable one or more of the plans involved to avoid or postpone insolvency. PBGC's regulations specify the information requirements for a voluntary request for a facilitated merger under section 4231(e) of ERISA, including a financial assistance merger.

PBGC uses information submitted by plan sponsors under the regulation to determine whether mergers and transfers conform to the requirements of ERISA section 4231 and the regulation.

The collection of information under the regulation has been approved by OMB under control number 1212–0022 (expires November 30, 2021). On June 23, 2021, PBGC published in the **Federal Register** (at 86 FR 32983) a notice informing the public of its intent to request an extension of this collection of information. No comments were received. PBGC is requesting that OMB extend approval of the collection for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC estimates that there are 14 transactions each year (excluding financial assistance mergers). The estimated annual burden of the collection of information for 14 transactions (excluding financial assistance mergers) is 14 fund office hours and $84,400 in contractor costs for work by attorneys and actuaries. PBGC further estimates that there is one request each year for a financial assistance merger. The annual burden of the collection of information for financial assistance mergers is 10 fund office hours and $36,000 in contractor costs. The total annual burden of the collection of information is approximately 24 fund office hours and $120,400 in contractor costs.

Issued in Washington, DC, by:

Hilary Duke,

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

[FR Doc. 2021–19978 Filed 9–15–21; 8:45 am]

BILLING CODE 7709–02–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2020–181]

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 20, 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):* CP2020–181; *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 10, 2021; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Gregory Stanton; *Comments Due:* September 20, 2021.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2021–20014 Filed 9–15–21; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., September 23, 2021.

PLACE: Members of the public wishing to attend the meeting must submit a written request at least 24 hours prior to the meeting to receive dial-in information. All requests must be sent to *SecretarytotheBoard@rrb.gov.*

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

(1) SCOTUS update
(2) Re-Entry Plan update
(3) Office of Legislative Affairs briefing
(4) Budget briefing from CFO

CONTACT PERSON FOR MORE INFORMATION: Stephanie Hillyard, Secretary to the Board, (312) 751–4920.

Authority: 5 U.S.C. 552b.

Dated: September 14, 2021.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2021–20167 Filed 9–14–21; 4:15 pm]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92933; File No. SR–CboeBYX–2021–018]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

September 10, 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 BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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 BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

[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).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Fee Schedule to amend the criteria for Add Volume Tiers 1 through 4, effective September 1, 2021.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange has more than 16% of the market share.[3] Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Taker-Maker'' model whereby it pays credits to members that remove liquidity and assesses fees to those that add liquidity. The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that remove and provide liquidity, respectively. Particularly, for securities at or above $1.00, the Exchange provides a standard rebate of $0.00020 per share for orders that remove liquidity and assesses a fee of $0.00200 per share for orders that add liquidity. For orders priced below $1.00, the Exchange does not assess a fee or provide a rebate for orders that add liquidity and assesses a fee of 0.10% of total dollar value for orders that remove liquidity. 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 to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria. For example, the Exchange currently offers various Add/Remove Volume Tiers under footnote 1 of the Fee Schedule, which offer various enhanced rebates and reduced fees for reaching certain, incrementally more challenging volume-based thresholds.

The Exchange proposes to amend the criteria for Add Volume Tiers 1 through 4 under footnote 1 of the Fee Schedule, which tiers currently provide Members an opportunity to qualify for reduced fees for orders yielding fee codes B,[4] V,[5] and Y[6] where a Member meets certain required volume-based criteria. Specifically, Add Volume Tiers 1 through 4 are as follows:

- Tier 1 provides a reduced fee of $0.0017 per share to a Member that has an ADAV[7] as a percentage of TCV[8] greater than or equal to 0.25%.
- Tier 2 provides a reduced fee of $0.0014 per share to a Member that has an ADAV as a percentage of TCV greater than or equal to 0.30%.
- Tier 3 provides a reduced fee of $0.0013 per share to a Member that has an ADAV as a percentage of TCV greater than or equal to 0.45%.
- Tier 4 provides a reduced fee of $0.0012 per share to a Member that has an ADAV as a percentage of TCV greater than or equal to 1.00%.

Now, the Exchange proposes to modify these tiers to reduce the ADAV as a percentage of TCV thresholds. The proposed Add Volume Tiers are as follows:

- To meet the proposed criteria in Tier 1, a Member must have an ADAV as a percentage of TCV equal to or greater than 0.20% (instead of 25%).
- To meet the proposed criteria in Tier 2, a Member must have an ADAV as a percentage of TCV equal to or greater than 0.25% (instead of 30%).
- To meet the proposed criteria in Tier 3, a Member must have an ADAV as a percentage of TCV equal to or greater than 0.30% (instead of 45%).
- To meet the proposed criteria in Tier 4, a Member must have an ADAV as a percentage of TCV equal to or greater than 0.60% (instead of 1.00%).

The proposed changes to these tiers are designed to make each tier's criteria easier to reach by lowering the volume-based criteria (*i.e.,* the ADAV as a percentage of TCV thresholds). The Exchange believes that by easing the tiers' criteria difficulty it will encourage those Members who could not previously achieve these Tiers to increase their order flow as a means to receive the Tiers' proffered fee reductions. The Exchange does not propose any changes to the corresponding reduced fee under each tier and notes that it believes the current rates remain commensurate with each tier's criteria, even as amended. The Exchange also believes the Add Volume Tiers, as amended, continue to provide liquidity providing Members on the Exchange additional opportunities to receive discounted rates. The Add Volume Tiers are designed to provide Members that submit displayed liquidity on the Exchange incentives to contribute to a deeper, more liquid market, in turn, providing additional execution opportunities at transparent prices as a result of such increased, displayed liquidity. The Exchange believes that this benefits all Members by enhancing overall market quality and contributing towards a robust and well-balanced market ecosystem. The Exchange notes the modified tiers are available to all Members.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[9] in general, and furthers the objectives of Section 6(b)(4),[10] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)[11] requirements that the rules of

[3] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (August 30, 2021), available at *https://markets.cboe.com/us/equities/market_statistics/.*

[4] Orders yielding Fee Code B are displayed orders that add liquidity to BYX (Tape B) and are assessed a standard fee of $0.00200.

[5] Orders yielding Fee Code V are displayed orders that add liquidity to BYX (Tape A) and are assessed a standard fee of $0.00200.

[6] Orders and orders yielding Fee Code Y are displayed orders that add liquidity to BYX (Tape C) and are assessed a standard fee of $0.00200.

[7] ''ADAV'' means average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

[8] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(5).

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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. Also, as described above, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,[12] including the Exchange,[13] and are reasonable, equitable and non-discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

In particular, the Exchange believes the proposed changes to ease the volume-based criteria under Add Volume Tiers 1 through 4 is a reasonable means to encourage Members to increase their add liquidity on the Exchange. Further, the Exchange believes that the proposed changes are reasonable as the proposed criteria does not represent a significant departure from the criteria currently required of each tier. Additionally, the Exchange believes Add Volume Tiers 1 through 4 will continue to provide Members additional opportunities to meet criteria to receive a reduced fee, even as modified. The Exchange also believes that the proposed reduced fees under Add Volume Tiers 1 through 4, which are not being changed, continue to be commensurate with the new criteria.

As noted above, the Exchange believes the proposed changes incentivize Members to increase their overall add volume order flow, which may provide for deeper, more liquid markets and execution opportunities at improved prices, which the Exchange believes signals an increase in activity from other market participants. This overall increase in activity deepens the Exchange's liquidity pool, offers additional cost savings, supports the quality of price discovery, promotes market transparency and improves market quality, for all investors.

The Exchange believes that the proposed rule change represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members are eligible for the Add Volume Tiers and have the opportunity to meet the tiers' criteria and receive the corresponding reduced fees if such criteria, even as amended, is met. The Exchange notes that currently one Member is satisfying the current criteria under Add Volume Tier 2 and no Members are satisfying the current criteria under Add Volume Tiers 1, 3 or 4. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity. However, the Exchange anticipates that at least one Member will be able to satisfy the criteria proposed under Add Volume Tier 3 and does not anticipate any firms immediately satisfying Add Volume Tiers 1, 2 or 4. The Exchange also notes that the proposed changes will not adversely impact any Member's ability to qualify for reduced fees or enhanced rebate offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive the corresponding reduced fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''

The Exchange believes the proposed rule change does not 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 Add Volume Tiers 1 through 4 applies to all Members equally in that all Members are eligible for these tiers, have a reasonable opportunity to meet the tiers' criteria and will receive the reduced fee on their qualifying orders if such criteria is met. The Exchange does not believe the proposed changes burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of BYX by amending existing pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

Next, 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 previously discussed, the Exchange operates in a highly competitive market. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 16% of the market share.[14] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed,

[12] *See e.g.,* Nasdaq BX, Equity 7 Pricing Schedule, Section 118.

[13] *See* BYX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

[14] *See supra* note 3.

participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. 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 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 fee changes imposes 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.

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–CboeBYX–2021–018 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–CboeBYX–2021–018. 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–CboeBYX–2021–018 and should be submitted on or before October 7, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19969 Filed 9–15–21; 8:45 am]

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[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).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92937; File No. SR–NASDAQ–2021–071]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete the Order Audit Trail System Rules in the Equity 5 Series of the Exchange's Rulebook

September 10, 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 September 3, 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 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 delete the Order Audit Trail System (''OATS'') rules in the Equity 5 Series of the Exchange's rulebook that provides for the collection of information that is duplicative of the data collection requirements of the CAT. Further, the Financial Industry Regulatory Authority (''FINRA'') has determined to eliminate its OATS 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

Rule 613 of Regulation NMS requires national securities exchanges and FINRA to create, implement, and maintain a consolidated audit trail to capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,[3] and approved by the Commission, as modified, on November 15, 2016.[4]

On August 14, 2020, FINRA filed with the Commission a proposed rule change to delete the OATS rules once Industry Members are effectively reporting to the CAT (the ''OATS Retirement Filing'').[5] On October 29, 2020, FINRA filed Amendment No. 1 to the proposed rule change (''Amendment No. 1'') and a response to the comments that were submitted on the original filing (''Response to Comments'').[6] On November 30, 2020, the Commission approved the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.[7] On June 17, 2021, FINRA filed a proposed rule change setting forth the basis for its determination that the accuracy and reliability of the CAT meet the standards approved by the Commission in the OATS Retirement Filing for purposes of eliminating the OATS rules.[8] The FINRA proposal stated that FINRA would retire OATS effective September 1, 2021.

After conducting an analysis of its rules in accordance with the CAT NMS Plan, the Exchange has determined that the information collected pursuant to the OATS rules is intended to be collected by CAT. Further, the Exchange believes that the Equity 5 Series will no longer be necessary and proposes to delete such rules from the Exchange's rulebook. Discussed below is a description of the duplicative rule requirements as well as the timeline for eliminating the duplicative rules followed by a discussion on the OATS Retirement Filing that formed the basis for retiring OATS.

Duplicative OATS Requirements

The Equity 5 Series consists of Section 1 through Section 6 and sets forth the recording and reporting requirements of the OATS Rules. The OATS Rules require all Exchange member organizations and associated persons to record in electronic form and report to FINRA, on a daily basis, certain information with respect to orders originated, received, transmitted, modified, canceled, or executed by members in all NMS stocks, as that term is defined in Rule 600(b)(47) of Regulation NMS,[9] traded on the Exchange, including Nasdaq-listed securities. The Exchange relies on the information reported to OATS either to conduct surveillance or to facilitate surveillance conducted by FINRA pursuant to a regulatory services agreement (''RSA''). This information is used by Exchange and FINRA staff to conduct surveillance and investigations of member firms for violations of Exchange and FINRA rules and federal securities laws. The Exchange believes it is appropriate to retire OATS because the requirements of the Equity 5 Series are duplicative of information available in the CAT and thus will no longer be necessary now that the CAT is operational.

Timeline for Elimination of Duplicative Rules

The CAT NMS Plan states that the elimination of rules that are duplicative of the requirements of the CAT and the retirement of the related systems should be effective at such time as CAT Data meets minimum standards of accuracy and reliability.[10] As discussed in more detail in the OATS Retirement Filing, FINRA believes that OATS may be retired effective September 1, 2021 given the error rate thresholds have been met, and FINRA has determined that its usage of the CAT Data has not revealed material issues that have not been corrected and further confirmed that the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations.

OATS Retirement Filing

In the OATS Retirement Filing, FINRA proposed to eliminate the OATS rules once Industry Members are effectively reporting to the CAT and the CAT's accuracy and reliability meet certain standards. Specifically, FINRA proposed that before OATS could be retired, the CAT generally must achieve a sustained error rate for Industry Member reporting in five categories for a period of at least 180 days of 5% or lower on a pre-correction basis, and 2% or lower on a post-correction basis (measured at T+5). In addition to the maximum error rates and matching thresholds, FINRA's use of CAT Data must confirm that (i) there are no material issues that have not been corrected, (ii) the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage of Phase 2a Industry Member Data.

In the OATS Retirement Filing, FINRA explained that its review of CAT Data and error rates would be based on data and linkages in the initial phase of reporting (or ''Phase 2a''), which replicate the data in OATS today and thus are most relevant for OATS retirement purposes. Phase 2a Data includes all events and scenarios covered by OATS and applies only to equities. FINRA did not consider options order events or Phase 2c data and validations, which are not in OATS today, for purposes of OATS retirement.

[3] *See* Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

[4] *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (''Order Approving the National Market System Plan Governing the Consolidated Audit Trail) (''Approval Order'').

[5] *See* Securities Exchange Act Release No. 89679 (August 26, 2020), 85 FR 54461 (September 1, 2020) (Notice of Filing of File No. SR–FINRA–2020–024).

[6] *See* Letter from Lisa C. Horrigan, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated October 29, 2020.

[7] *See* Securities Exchange Act Release No. 90535 (November 30, 2020), 85 FR 78395 (December 4, 2020) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of SR–FINRA–2020–024).

[8] *See* Securities Exchange Act Release No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021) (SR–FINRA–2021–017) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Retirement of FINRA's Order Audit Trail System).

[9] 17 CFR 242.600(B)(47).

[10] Appendix C of CAT NMS Plan, Approval Order at 85010.

As described below, FINRA has determined that the CAT meets the accuracy and reliability standards approved by the Commission in the OATS Retirement Filing.

(1) Maximum Error Rates

As discussed in the OATS Retirement Filing, FINRA believes that relevant error rates are the primary, but not the sole, metric by which to determine the CAT's accuracy and reliability and will serve as the baseline requirement needed before OATS can be retired. FINRA proposed that, before OATS could be retired, the CAT would generally need to achieve a sustained error rate for Industry Member reporting in five categories for a period of at least 180 days of 5% or lower, measured on a pre-correction or as-submitted basis, and 2% or lower on a post-correction basis (measured at T+5).[11] FINRA proposed to average the error rates across the period, rather than require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. FINRA also proposed to measure the error rates in the aggregate, rather than on a firm-by-firm basis. Finally, FINRA proposed to measure the error rates separately for each of the five categories, rather than evaluate all categories in the aggregate. As noted above, FINRA's assessment of the error rates for Industry Member reporting is based solely on Phase 2a CAT reporting for equity events since options orders are not included in OATS today.

As discussed in the OATS Retirement Filing, FINRA measured the error rates in each of the five categories discussed below during the period from October 26, 2020 through April 26, 2021 (the ''applicable period''). FINRA commenced this period on October 26, 2020, which was the date that Industry Members were required to begin correcting all errors for inter-firm linkages and exchange/TRF/ORF match validations. As discussed in the Response to Comments, although the production environment for inter-firm linkage and exchange/TRF/ORF match validations was open for testing as of September 28, 2020, FINRA did not believe it would be appropriate for the 180-day period to commence prior to the October 26, 2020 compliance date.[12]

Rejection Rates and Data Validations

As described in the OATS Retirement Filing, the Plan Processor must perform certain basic data validations,[13] and if a record does not pass these basic data validations, it must be rejected and returned to the CAT Reporter to be corrected and resubmitted. FINRA proposed that over the 180-day period, aggregate rejection rates must be no more than 5% pre-correction or 2% post-correction across all Industry Member Reporters. FINRA has determined that, over the applicable period, aggregate rejection rates across all Industry Member Reporters were 0.03% pre-correction and 0.01% post-correction.

Intra-Firm Linkages

As described in the OATS Retirement Filing, the Plan Processor must be able to link all related order events from all CAT Reporters involved in the lifecycle of an order. At a minimum, this requirement includes the creation of an order lifecycle between all order events handled within an individual CAT Reporter, including orders routed to internal desks or departments with different functions (*e.g.,* an internal ATS). FINRA proposed that aggregate intra-firm linkage rates across all Industry Member Reporters must be at least 95% pre-correction and 98% post-correction. FINRA has determined that, over the applicable period, aggregate intra-firm linkage rates across all Industry Member Reporters were 99.97% pre-correction and 99.99% post-correction.

Inter-Firm Linkages

As described in the OATS Retirement Filing, the Plan Processor must be able to create the lifecycle between orders routed between broker-dealers. FINRA proposed that at least a 95% pre-correction and 98% post-correction aggregate match rate be achieved for orders routed between two Industry Member Reporters. FINRA has determined that during the applicable period there was a 99.08% pre-correction and 99.84% post-correction aggregate match rate for orders routed between two Industry Member Reporters.

Order Linkage Rates

As described in the OATS Retirement Filing, in addition to creating linkages within and between broker-dealers, the Plan Processor must be able to create lifecycles to link various pieces of related orders. For example, the Plan requires linkages of order information to create an order lifecycle from origination or receipt to cancellation or execution. This category essentially combines all of the order-related linkages to capture an overall snapshot of order linkages in the CAT.[14] FINRA proposed that there be at least a 95% pre-correction and 98% post-correction rate for order linkages that are required in Phase 2a. FINRA has determined that during the applicable period there was a 99.66% pre-correction and 99.93% post-correction rate for order linkages required in Phase 2a.16.[15]

Exchange and TRF/ORF Match Rates

As described in the OATS Retirement Filing, an order lifecycle must be created to link orders routed from broker-dealers to exchanges and executed orders and trade reports. FINRA proposed at least a 95% precorrection and 98% post-correction aggregate match rate across all equity exchanges[16] for orders routed from

[11] As clarified in the OATS Retirement Filing, although FINRA does not believe that post-correction errors need to be de minimis before OATS can be retired, FINRA was not suggesting, with the proposal, that 2% would meet the ultimate objective of de minimis error rates for CAT. *See* CAT NMS Plan, Appendix C, note 102 (error rates after reprocessing of error corrections are ultimately expected to be de minimis for the CAT). *See also* Approval Order.

[12] *See* FINRA's Response to Comments, *supra* note 7.

[13] Appendix D of the CAT NMS Plan, Section 7.2, for example, requires that certain file validations (*e.g.,* file transmission and receipt are in the correct formats, confirmation of a valid SRO–Assigned Market Participant Identifier, etc.), and syntax and context checks (*e.g.,* format checks, data type checks, consistency checks, etc.) be performed on all submitted records.

[14] *See* FINRA's Response to Comments, supra note 7.

[15] FINRA noted that in Phase 2a, linkage is required between the representative street side order and the order being represented when the representative order was originated specifically to represent a single order (received either from a customer or another broker-dealer) and there is: (1) An existing direct electronic link in the firm's system between the order being represented and the representative order, and (2) any resulting executions are immediately and automatically applied to the represented order in the firm's system. As set forth in the OATS Retirement Filing, while such linkages are not required in OATS, FINRA believes that it is appropriate to evaluate them for purposes of retiring OATS because they represent a significant enhancement to the data currently available in OATS and will enhance the quality of the equity audit trail. However, FINRA also explained in the Response to Comments that if all other proposed criteria have been met, FINRA would not anticipate delaying OATS retirement based on Phase 2a representative order linkage error rates alone.

In evaluating whether the standards for OATS retirement have been met, FINRA determined that the error rates for the Phase 2a representative order linkages did not have a significant negative impact on the overall error rates for order linkages. Accordingly, FINRA did not need to separately evaluate or exclude Phase 2a representative order linkage rates in measuring the error rates over the applicable period. For example, if the intra-firm linkage error rate had been above 5% over the applicable period, FINRA would have evaluated whether the error rate was the result of unlinked representative orders to create an apples-to-apples comparison to OATS.

[16] *See* Amendment No. 1.

Industry Members to an exchange and, for over-the-counter executions, the same match rate for orders linked to trade reports. FINRA determined that, during the applicable period, there was a 99.51% pre-correction and 99.87% post-correction aggregate match rate across all equity exchanges for orders routed from Industry Members to an exchange and, for over-the-counter executions, there was a 99.34% pre-correction and 99.53% post-correction rate for orders linked to trade reports submitted to the FINRA Trade Reporting Facilities and OTC Reporting Facility.

As set forth above, the error rates for Industry Member reporting over the applicable period were well below the maximum rates established in the OATS Retirement Filing. FINRA also noted that the overall post-correction error rate for Phase 2a Industry Member reporting of 1.01% is comparable to the current overall OATS post-correction error rate, which generally is at or slightly below 1%. Therefore, FINRA has determined that, based on the error rates for Industry Member reporting, the CAT Data meets the accuracy and reliability baseline standards required for OATS retirement.

(2) FINRA's Use of CAT Data

In the OATS Retirement Filing, FINRA stated that while error rates are a key standardized measure in determining whether OATS retirement is appropriate, FINRA's use of the data in the CAT also must confirm that (i) there are no material issues that have not been corrected (*e.g.,* delays in the processing of data, issues with query functions, etc.), (ii) the CAT includes all data necessary to allow FINRA to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage of Phase 2a Data.

In the OATS Retirement Filing, FINRA stated that it has been planning for OATS retirement for several years and the necessary development work has been underway for some time. FINRA also has been analyzing and testing production CAT Data for purposes of transitioning its automated equity surveillance patterns since the commencement of Phase 2a Industry Member reporting in June 2020 and through subsequent CAT milestone releases. For example, in addition to quantitative reviews, such as the error rate statistics discussed above, FINRA has conducted a series of qualitative reviews of Industry Member CAT Data. Such reviews include, among other things, comparing the count and distribution of Industry Member event reporting through CAT versus OATS (*e.g.,* new order and execution events, and data elements such as buy/sell/sell short codes), and reviewing results of examinations, alert reviews, and investigations relating to the timeliness and accuracy of Industry Member reporting. Based on such qualitative data reviews, FINRA has concluded that Industry Member CAT Data, in the aggregate, is a sufficient replacement for OATS for purposes of FINRA's surveillance program.

As discussed in the OATS Retirement Filing, today, FINRA's surveillance patterns rely on the cross-market data model (''CMDM''), which comprises linked OATS data, equity exchange data feeds from each of the exchanges with which FINRA has entered into a RSA, and transactions reported to FINRA's equity trade reporting facilities. The CMDM will be retired and replaced by a newly created surveillance data mart, the Pattern Optimized Datamart (''POD''), which incorporates both equities and options data. At that point, FINRA's patterns will rely on CAT Data in POD, *i.e.,* Plan Participant and Industry Member data reported in CAT format and linked by CAT.[17] FINRA notes that the Plan Participants transitioned to reporting via the CAT technical specification as of April 26, 2021, and full Plan Participant equities reporting and linkage validations in accordance with the CAT specification commenced on June 1, 2021.[18] Successful completion of the transition to the CAT specification for Plan Participants is a prerequisite for FINRA to retire the CMDM and leverage CAT Data and linkages in POD for its surveillance patterns. As of the date of this filing, FINRA has completed all planned activities on schedule, including substantially completing the process of integrating CAT Data into POD and successfully running large amounts of production CAT Data for the month of May through POD.[19] FINRA anticipates completing additional activities before the proposed OATS retirement date, including, *e.g.,* planned user acceptance testing.[20]

As discussed in the OATS Retirement Filing, FINRA has performed broad analysis of its equity surveillance patterns and has determined that all of the data required to support the transition is available in CAT. By mapping OATS data to Industry Member CAT Data in POD, FINRA has confirmed that CAT Data has equivalent analogs to all data elements in OATS. In that regard, FINRA notes that, as a Plan Participant, FINRA has been involved in CAT development efforts to ensure that the scope and features of Industry Member data and processed output are sufficient for FINRA's surveillance program. These efforts include, for example, developing and updating the Industry Member Technical Specifications and Reporting Scenarios, conducting OATS–CAT gap analyses and validating that all such gaps have been properly addressed, and performing OATS-to-CAT field-level mappings.

With respect to Plan Participant data, FINRA notes in the OATS Retirement Filing that the test environment for Plan Participant reporting in accordance with the CAT specification opened on February 15, 2021.[21] Plan Participant equity reporting in accordance with the CAT specification in the test environment had a very high compliance rate for data ingestion and validation, and compliance in the production environment is comparable. In addition, starting on April 26, 2021, CAT began linking copies of Industry Member and Plan Participant data reported via the CAT specification in a test environment, and at that point, FINRA began its evaluation of the quality of these linkages. Based on this review and evaluation, in the OATS Retirement Filing, FINRA stated that it believes that the linkages between Plan Participant data and Industry Member data in CAT are comparable to the linkages between RSA exchange data

[17] FINRA's Response to Comments noted this dependency, stating that the process of transitioning FINRA's surveillance patterns to CAT Data necessarily includes, among other things, ingestion of all Industry Member and Plan Participant data and linkages in CAT format. *See* Response to Comments, supra note 7, at 4. The Response to Comments further noted that the Plan Participants would be reporting to CAT via another mechanism until April 2021.

[18] For example, according to the CAT Reporting Technical Specification for Plan Participants (version 4.0.0-r4 dated April 20, 2021), additional linkage error feedback for off-exchange trade reports was effective as of June 1, 2021. The Technical Specifications can be found on the CAT NMS Plan website at *http://www.catnmsplan.com/sites/default/files/2021-04/04.20.2021-CAT-ReportingTechnical-Specifications-for-Participants-4.0.0-r4.pdf.*

[19] FINRA notes that additional POD releases are scheduled; however, these releases introduce minor enhancements to POD, as opposed to significant changes that would impact the way data is ingested or processed in POD.

[20] FINRA notes that user acceptance testing is the final stage of any software development life cycle and enables actual users to test the system to confirm that it is able to carry out the required tasks it was designed to address in real-world situations.

[21] *See, e.g.,* CAT Q1 2021 Quarterly Progress Report dated April 30, 2021, available at *www.catnmsplan.com/sites/default/files/2021-05/CAT-Q1-2021-QPR.pdf.*

and OATS data in the CMDM today.[22] FINRA CAT and the Plan Participants have now met the necessary criteria for a full cutover from the RSA specification to the CAT specification, including, *e.g.,* achieving comparable data ingestion validation and inter-venue linkage rates (within a variance of under one percent) between RSA and CAT specification submissions. Accordingly, the Operating Committee approved the cutover from the RSA specification to the CAT specification as the official source of Plan Participant data as of June 1, 2021, and today, all Industry Member and Plan Participant equities data reported via the CAT specification is linked in the CAT production environment.

As discussed in the OATS Retirement Filing, FINRA continues to evaluate CAT Data quality, and in particular, linkages between Industry Member and Plan Participant data, and to test its surveillance patterns to run on CAT Data in POD. In that regard, FINRA notes that it has followed established and time-tested processes and protocols throughout the development process to ensure that its patterns will perform as expected and produce the necessary output using CAT Data following the retirement of OATS. For example, FINRA's Software Development Lifecycle (''SDLC'') procedures govern systems design, changes, testing and controls. The SDLC procedures are an essential component of FINRA's operations and have been developed to serve FINRA's unique regulatory needs and structure. Additionally, consistent with SEC Regulation SCI, FINRA procedures include a plan of coordination and communication with regulatory staff. By relying on these established processes and protocols, FINRA has confidence that the CAT Data and linkages are reliable and sufficient to run FINRA's surveillance patterns.

Based on these results, as well as the results of its quantitative and qualitative reviews of CAT Data and successful efforts integrating CAT Data into POD, in the OATS Retirement Filing, FINRA stated that it believes that the complete portfolio of equity surveillance patterns will be capable of consuming CAT Data and achieving comparable (or better) output results.

Thus, FINRA proposes to retire OATS in accordance with the schedule set forth herein. FINRA will run its surveillance patterns for review periods through the end of the second quarter of 2021 using OATS data and begin using—and be fully reliant on—CAT Data for its surveillance patterns for review periods beginning in the third quarter of 2021. Following the retirement of OATS, FINRA expects to maintain the current established cadence of its monthly, quarterly and semi-annual surveillance patterns. In addition, FINRA's analytics platforms will have access to CAT Data as soon as such data is made available to regulators. Thus, outside of regularly scheduled surveillance pattern runs, FINRA can perform expedited analytics, as required by market events.

As discussed in the OATS Retirement Filing, FINRA is finalizing the development and certification of its surveillance patterns to run on CAT Data on a rolling basis and, in accordance with its existing SDLC procedures, will run a month's worth of data and compare the output before certifying each pattern. For those equity patterns that will be subject to certification after OATS retirement, FINRA anticipates that there would be sufficient time to identify and remediate any issues prior to running the patterns in accordance with the current established cadence. FINRA does not anticipate significant issues arising from additional scheduled POD releases or in the final stages of its pattern development and certification efforts.

As discussed in the OATS Retirement Filing, on an ongoing basis following the retirement of OATS, FINRA will conduct regular reviews to ensure confidence in the completeness and accuracy of Industry Member reporting, along with the ability to remediate any issues in a timely manner. Among other things, FINRA has a robust mechanism for detecting data issues, determining which issues are material for purposes of its surveillance program, and requesting resubmission and/or reprocessing of data, as necessary. FINRA also (1) performs a suite data quality checks against data sourced from CAT to POD and against data processed by POD for use in surveillance patterns; (2) oversees a robust surveillance and examination compliance program that evaluates Industry Member reporting timeliness, data quality, and other issues and trends; (3) reviews CAT compliance program alerts using a rapid remediation process and formal reviews, as necessary; and (4) reviews Industry Member self-reporting and error correction trends. FINRA believes that these practices are sufficient for identification and timely resolution of Industry Member reporting and data issues after OATS has been retired.

Specifically, with regard to the additional standards approved in the OATS Retirement Filing, through its use of CAT Data to date, as described above, FINRA believes that these standards have been satisfied. With respect to the first factor, FINRA does not believe that there are any material issues that have not been corrected (or could not be corrected in the course of operation of CAT, as approved by the Operating Committee)[23] that would impact FINRA's ability to incorporate and use CAT Data in FINRA's surveillance program. For example, the Plan requires that raw unprocessed data that has been ingested by the Plan Processor must be available to Participant regulatory staff and the SEC prior to 12:00 p.m. Eastern Time on T+1, and access to all iterations of processed data must be available to Participant regulatory staff and the SEC between 12:00 p.m. Eastern Time on T+1 and T+5.[24] The Plan Processor also must ensure that regulators have access to corrected and linked order data by 8:00 a.m. Eastern Time on T+5.[25] Additionally, after ingestion by the Central Repository, the raw unprocessed data must be transformed into a format appropriate for data querying and regulatory output.[26] The user-defined direct queries and bulk extracts must provide authorized users with the ability to retrieve CAT Data via a query tool or language that allows users to query all available attributes and data sources.[27] FINRA's use of the CAT Data has not uncovered any processing delays or other material issues impacting the availability of, and FINRA's access to, the data.

With respect to the second factor, FINRA stated in the OATS Retirement Filing that it believes that the CAT includes all data necessary for FINRA to meet its surveillance obligations after the retirement of OATS. FINRA must ensure that the CAT, as the single source of order and trade data, can enable FINRA to conduct accurate and effective market surveillance in accordance with its regulatory

[22] FINRA notes that the CAT uses the same code in both the test and production environments. Thus, FINRA believes that linkages in the test environment are reliable indicators of linkages in the production environment.

[23] FINRA notes that FINRA CAT tracks known issues relating to Industry Member and Plan Participant reporting. *See, e.g., catnmsplan.com/CAT-Transaction-Known-Issues-List.* FINRA regularly reviews and analyzes FINRA CAT's list of current and resolved issues and does not believe that any of these issues would impact its ability to incorporate and use CAT Data in its surveillance program.

[24] *See* CAT NMS Plan, Appendix D, Section 6.2.

[25] *See* CAT NMS Plan, Appendix C, Section A.2(a).

[26] *See* CAT NMS Plan, Appendix C, Section A.1(b).

[27] *See* CAT NMS Plan, Section 6.10(c).

obligations.[28] As noted above, Phase 2a Data includes all events and scenarios covered by OATS and is the most relevant for OATS retirement purposes. FINRA Rule 7440 describes the OATS requirements for recording information, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions. Large Industry Members and Small Industry Members that currently are reporting to OATS were required to submit data to the CAT for these same events and scenarios commencing in Phase 2a. FINRA's testing, analysis and use of the CAT Data (including integration into POD), as described above, has confirmed that the CAT includes all data necessary for FINRA to meet its surveillance obligations and that CAT is a reliable substitute for OATS. In addition, based on its qualitative data reviews, FINRA has concluded that Industry Member CAT Data, in the aggregate, is a sufficient replacement for OATS for purposes of FINRA's surveillance program.

With respect to the third factor, FINRA stated in the OATS Retirement Filing that it believes that the Plan Processor is sufficiently meeting its obligations under the CAT NMS Plan relating to the reporting and linkage of Phase 2a Data. As detailed in the Implementation Plan and Quarterly Progress Reports submitted by the Plan Participants, the Plan Processor has met its targeted completion dates for the milestones for Phase 2a, including, for example, production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters) on June 22, 2020; Production Go-Live for Equities 2a Intrafirm Linkage validations on July 27, 2020; and production go-live for firm-to-firm linkage validations for equities (Large Industry Members and Small OATS Reporters) and exchange and TRF/ORF linkage validations for equities (Large Industry Members and Small OATS Reporters) on October 26, 2020.[29]

Based on the foregoing, FINRA has determined that the CAT meets the accuracy and reliability standards approved by the Commission in the OATS Retirement Filing for purposes of eliminating the OATS Rules. FINRA has determined to retire OATS and remove the OATS rules from its rulebook effective September 1, 2021. Firms must continue to report to OATS all order events that occur on or prior to August 31, 2021. Reports submitted to OATS for order events that occur after August 31, 2021 will be rejected. In other words, August 31, 2021 will be the last ''OATS Business Day,'' as defined under FINRA Rule 7450(b)(3), for which OATS will accept order events and perform routine processing (including incorporation of corrections and repairs of rejections) occurring within the normal OATS timeframe for such activities. OATS will continue to accept reports for order events that occur on or prior to August 31, 2021 (including, but not limited to, late and corrected reports for such order events) through September 16, 2021. Firms must ensure that their OATS reporting is accurate and complete for all order events that occur on or prior to August 31, 2021.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[30] in general and Section 6(b)(5) of the Act[31] in particular in that 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.

In particular, the Exchange believes that the proposed rule change is consistent with Section C.9 of Appendix C to the Plan, which requires each Participant to ''file with the SEC the relevant rule change filing to eliminate or modify its duplicative rules within six (6) months of the SEC's approval of the CAT NMS Plan.''[32] The Plan notes that ''the elimination of such rules and the retirement of such systems [will] be effective at such time as CAT Data meets minimum standards of accuracy and reliability.''[33] Accordingly, the Exchange believes the proposed rule change implements, supports, interprets or clarifies the provisions of the Plan, and is designed to assist the Exchange and its member organizations in meeting regulatory obligations pursuant to, and milestones established by, the Plan. In approving the Plan, the SEC noted that it ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.''[34] To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to member organizations, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The proposed change is not designed to address any competitive issue but rather implement provisions of the CAT NMS Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

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[35] and subparagraph (f)(6) of Rule 19b–4 thereunder.[36] The proposed rule change

[28] As discussed in the OATS Retirement Filing, OATS was originally proposed to fulfill one of the undertakings contained in an order issued by the Commission relating to the settlement of an enforcement action against FINRA (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) for failure to adequately enforce its rules. *See* Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998) (Order Approving File No SR–NASD–97–56) (''OATS Approval Order''); *see also* Securities Exchange Act Release No. 37538 (August 8, 1996); Administrative Proceeding File No. 3–9056 (''SEC Order''). In the OATS Approval Order, the Commission concluded that OATS satisfied the conditions of the SEC Order and was consistent with the Exchange Act. *See* 63 FR 12559, 12566–67. FINRA believes that it will continue to be in compliance with the requirements of the SEC Order once the OATS Rules are deleted.

[29] The Implementation Plan and Quarterly Progress Reports are available at *www.catnmsplan.com/implementation-plan.*

[30] 15 U.S.C. 78f.

[31] 15 U.S.C. 78f(b)(5).

[32] Appendix C of CAT NMS Plan, Approval Order at 85010.

[33] *Id.*

[34] Approval Order at 84697.

[35] 15 U.S.C. 78s(b)(3)(A)(iii).

[36] 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

Continued

would not significantly affect the protection of investors or the public interest because it seeks to delete the Exchange's OATS rules to be consistent with FINRA's retirement of its OATS rules. The Exchange further believes that the proposed rule change would not impose any significant burden on competition because the proposed rule change is not designed to address any competitive issue but rather implements provisions of the CAT NMS Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

A proposed rule change filed under Rule 19b–4(f)(6) [37] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[38] 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. As noted above, the Exchange believes that the OATS reporting requirements of the Equity 5 Series are duplicative of information available in the CAT and thus will no longer be necessary now that the CAT is operational. The Commission believes that it is consistent with the protection of investors and the public interest for the Exchange to delete its OATS reporting because FINRA has retired OATS. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[39]

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–2021–071 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–2021–071. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2021–071, and should be submitted on or before October 7, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19972 Filed 9–15–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92938; File No. SR–MSRB–2021–05]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Provide a Further Extension of Time To Become Appropriately Qualified by Passing the Municipal Advisor Principal Qualification Examination (Series 54) Pursuant to MSRB Rule G–3, on Professional Qualification Requirements

September 10, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 2, 2021 the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change to amend Supplementary Material .09, Temporary Relief for Municipal Advisor Principal, of MSRB Rule G–3, on professional qualification requirements, to provide a further extension of time for those individuals who meet the definition of a municipal advisor principal [3] to become appropriately qualified by passing the Municipal Advisor Principal Qualification Examination (''Series 54 examination''). The MSRB has designated the proposed rule change as constituting a ''noncontroversial'' rule

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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.

[37] 17 CFR 240.19b–4(f)(6).

[38] 17 CFR 240.19b–4(f)(6)(iii).

[39] For purposed only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[40] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''municipal advisor principal'' is defined in MSRB Rule G–3(e)(i) to mean a natural person associated with a municipal advisor who is qualified as a municipal advisor representative and is directly engaged in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons.

change under Section 19(b)(3)(A)[4] of the Act and Rule 19b–4(f)(6)[5] thereunder, which renders the proposal effective upon receipt of this filing by the Commission.

The text of the proposed rule change is available on the MSRB's website at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2021-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In April 2020, and again in December 2020, the MSRB filed proposed rule changes for immediate effectiveness with the SEC that provided regulatory relief on a temporary basis to municipal advisors and dealers in response to the operational challenges and disruptions to normal business functions as a result of the coronavirus disease (''COVID–19'') pandemic (''April relief'' and ''December relief'').[6] In connection with the MSRB's April relief, due to the uncertainty regarding ongoing stay-at-home orders and social distance restrictions that impacted capacity at Prometric testing centers,[7] the MSRB adopted Supplementary Material .09 of MSRB Rule G–3 to extend the date by which individuals were required to become qualified with the Series 54 examination from November 12, 2020 to March 31, 2021. In its December relief, due to the protracted nature of the pandemic, the MSRB amended Supplementary Material .09 of MSRB Rule G–3 a second time to extend the time period further from March 31, 2021 to November 12, 2021, for individuals to become qualified with the Series 54 examination.[8]

The proposed amendment to Supplementary Material .09 of MSRB Rule G–3 would further extend the time period from November 12, 2021 to November 30, 2021, for individuals to become qualified with the Series 54 examination. This time extension is being proposed in connection with the MSRB's efforts to facilitate the remote proctoring of the Series 54 examination; and notably, the proposed extension of time roughly coincides with the number of days taken to launch the Series 54 examination online.[9] On August 11, 2021, the MSRB announced, given the quickly approaching compliance date by which individuals have to take and pass the Series 54 examination and in recognition of pandemic-related challenges, the MSRB would provide an interim accommodation to allow individuals to take the Series 54 examination online. Specifically, the Series 54 examination was made available to take online beginning on August 23, 2021 and will be available to take online until November 30, 2021.[10] The Financial Industry Regulatory Authority (''FINRA''), as designated by the Commission, provides test administration services to the MSRB for the delivery of MSRB-owned professional qualification examinations and is facilitating the delivery of the Series 54 examination online.[11] The MSRB believes that the extension of time is appropriate given the quick nature in which the Series 54 examination was launched online, on account of exigent circumstances, and that the extension affords individuals time to engage in informed decision making regarding how to test. Relatedly, permitting the remote proctoring of the Series 54 examination, on a temporary basis, as well as ongoing in-person testing at Prometric testing centers, will facilitate compliance with MSRB Rule G–3(e)(ii) during the pandemic.

The MSRB proposes this interim accommodation in recognition of the approaching compliance date for municipal advisors to have at least one person appropriately qualified as a municipal advisor principal; and therefore, the accommodation is offered only with respect to the Series 54 examination.

2. Statutory Basis

Section 15B(b)(2)(A) of the Act[12] authorizes the MSRB to prescribe:

> . . . standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors and municipal entities or obligated persons.

The MSRB believes that the proposed rule change is consistent with this provision as those acting in the capacity of a municipal advisor principal would still be subject to the regulatory requirements under MSRB Rule G–3, including the requirement to be qualified with the Series 50 examination, which is a prerequisite to taking and passing the Series 54 examination in order to become qualified as a municipal advisor principal. Accordingly, the proposed amendments do not relieve municipal advisors from compliance with underlying obligations that directly serve to protect investors, municipal entities, obligated persons and the public interest. The extension of time will provide an opportunity for individuals to review the information provided by the MSRB on remote proctoring of exams; make an informed decision regarding how to test; complete the relevant FINRA form, as necessary; and take the exam in furtherance of MSRB Rule G–3, which was promulgated in furtherance of the Exchange Act. The extension provides a reasonable amount of time to facilitate remote proctoring and enhances compliance by providing greater opportunities for individuals to take the Series 54 examination.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] *See* Exchange Act Release No. 88694 (April 20, 2020), 85 FR 23088 (April 24, 2020) (File No. SR–MSRB–2020–01). *See* Exchange Act Release No. 90621 (December 9, 2020), 85 FR 81254 (December 15, 2020) (File No. SR–MSRB–2020–09).

[7] FINRA uses Prometric as its single vendor for the delivery of professional qualification examinations, including MSRB-owned professional qualification examinations.

[8] The April and December relief extended the initial one-year grace-period, previously set to expire on November 12, 2020, to allow individuals functioning as municipal advisor principals to continue to engage in the management, direction or supervision of the municipal advisory activities of the municipal advisor and its associated persons, so long as such persons are qualified with the Municipal Advisor Representative Qualification Examination (''Series 50'').

[9] The launch of the Series 54 examination online took approximately 12 days from the date the MSRB announced the exam would be made available online. The MSRB is proposing to extend the compliance date by 18 days taking into consideration the Thanksgiving holiday.

[10] *See* MSRB Notice 2021–10 (August 11, 2021), ''MSRB Provides Interim Accommodation for Municipal Advisor Principal Qualification Examination (Series 54 Exam),'' available at *https://www.msrb.org/-/media/Files/Regulatory-Notices/Announcements/2021-10.ashx??n=1.*

[11] *See, e.g.,* Exchange Act Release No. 75714 (August 17, 2015), 80 FR 50883 (August 21, 2015) (Designation of the Financial Industry Regulatory Authority to Administer Professional Qualification Tests for Associated Persons of Registered Municipal Advisors). Individuals who wish to take the Series 54 examination online must first complete ''FINRA Online Exam Administration Request Form,'' *available at https://www.finra.org/registration-exams-ce/qualification-exams/online-exam-administration.*

[12] 15 U.S.C. 78*o*–4(b)(2)(A).

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Act requires that MSRB rules be designed not to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[13] The MSRB believes that the proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act. The goal of the proposed rule change is to provide temporary relief to grant additional time for municipal advisors to meet certain obligations under MSRB rules during the exigent circumstances of the COVID–19 pandemic but would not alter their underlying obligations under MSRB rules. Not only does the proposed rule change not burden competition, but as set forth below, it may result in a benefit to competition.

Additionally, Section 15B(b)(2)(L)(iv) of the Exchange Act, requires that MSRB rules not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.[14] The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(L)(iv) of the Exchange Act[15] in that, while the proposed rule change to extend the date by which individuals have to pass the Series 54 examination will affect all municipal advisors, including small municipal advisors, there is no new regulatory burden that results. Small municipal advisors typically have fewer associated persons and, as a result, their resources may be more limited during the pandemic and the benefits of the proposed rule change may provide smaller municipal advisors a greater benefit given their limited resources. In addition, the MSRB believes that extending the compliance date by approximately 2½ weeks may serve to benefit small municipal advisors by providing greater opportunity for individuals to prepare for, take and pass the Series 54 examination and for municipal advisors to meet their compliance obligation to have at least one person properly qualified by passing the Series 54 examination by the compliance date.

[13] 15 U.S.C. 78*o*–4(b)(2)(C).

[14] 15 U.S.C. 78*o*–4(b)(2)(L)(iv).

[15] *Id.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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[16] and Rule 19b–4(f)(6)[17] 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MSRB–2021–05 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–MSRB–2021–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2021–05 and should be submitted on or before October 7, 2021.

For the Commission, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19973 Filed 9–15–21; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92936; File No. SR–NYSEArca–2021–78]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges

September 10, 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 amend the NYSE Arca Equities Fees and Charges (''Fee Schedule'') to eliminate the Step Up Tier 3 and Step Up Tier 5 pricing tiers. The Exchange proposes to implement the fee changes 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to eliminate the Step Up Tier 3 and Step Up Tier 5 pricing tiers. The Exchange proposes to implement the fee changes effective September 1, 2021.

Currently, to qualify for the Step Up Tier 3 credit, an ETP Holder [4] must execute providing ADV [5] per month of 0.15% or more, but less than 0.20% of the US CADV [6] and directly execute providing ADV that is an increase of no less than 0.075% of US CADV for that month over the ETP Holder's providing ADV in May 2018.[7] If an ETP Holder meets the Step Up Tier 3 requirement, such ETP Holder is eligible to earn a credit of $0.0025 per share for orders that provide displayed liquidity in Tape A and Tape C securities, and a credit of $0.0022 per share for orders that provide displayed liquidity in Tape B securities.

Additionally, to qualify for the Step Up Tier 5 credits, an ETP Holder must execute providing ADV per month that is at least 0.20% of US CADV and execute providing ADV per month as a percentage of US CADV that is at least two times more than that ETP Holder's providing ADV in April 2020 as a percentage of US CADV.[8] If an ETP Holder meets the Step Up Tier 5 requirement, such ETP Holder is eligible to earn a credit of $0.0032 per share for orders that provide liquidity in Tape A, Tape B and Tape C securities.

The Exchange proposes to eliminate both the Step Up Tier 3 and Step Up Tier 5 pricing tiers and remove each pricing tier from the Fee Schedule because the pricing tiers have been underutilized by ETP Holders. The Exchange has observed that not a single ETP Holder has qualified for either of the pricing tiers proposed for elimination in the last six months. Since both the Step Up Tier 3 and Step Up Tier 5 pricing tiers have not been effective in accomplishing their intended purpose, which is to incent ETP Holders to increase their liquidity adding activity on the Exchange, the Exchange has determined to eliminate each of these pricing tiers from the Fee Schedule.

With the proposed elimination of Step Up Tier 3 and Step Up Tier 5, the Exchange proposes to rename current Step Up Tier 4 as Step Up Tier 3.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and(5) of the Act,[10] 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 Exchange believes that the proposed rule change to eliminate the Step Up Tier 3 and Step Up Tier 5 pricing tiers is reasonable because each of the pricing tiers that are the subject of this proposed rule change have been underutilized and have not incentivized ETP Holders to bring liquidity and increase trading on the Exchange. No ETP Holder has availed itself of either of the pricing tiers in the last six months. The Exchange does not anticipate any ETP Holder in the near future to qualify for either of the tiers that are the subject of this proposed rule change. The Exchange believes it is reasonable to eliminate requirements and credits, and even entire pricing tiers, when such incentives become underutilized. The Exchange believes eliminating underutilized incentive programs would also simplify the Fee Schedule. The Exchange further believes that removing reference to the pricing tiers that the Exchange proposes to eliminate from the Fee Schedule would also add clarity to the Fee Schedule. The Exchange believes that eliminating requirements and credits, and even entire pricing tiers, from the Fee Schedule when such incentives become ineffective is equitable and not unfairly discriminatory because the requirements, and credits, and even entire pricing tiers, would be eliminated in their entirety and would no longer be available to any ETP Holder. All ETP Holders would continue to be subject to the same fee structure, and access to the Exchange's market would continue to be offered on fair and nondiscriminatory terms. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of underutilized pricing tiers would make the Fee Schedule more accessible and transparent and facilitate market participants' understanding of the fees charged for services currently offered by the Exchange.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[11] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Exchange's proposal to eliminate requirements and credits, and pricing tiers in their entirety, will not place any

[4] All references to ETP Holders in connection with this proposed fee change include Market Makers.

[5] ADV means average daily volume. *See* Fee Schedule, Section I. Definitions.

[6] US CADV means the United States consolidated average daily volume of transactions reported to a securities information processor (''SIP''). Transactions that are not reported to a SIP are not included in the US CADV. *See* Fee Schedule, Section I. Definitions.

[7] *See* Securities Exchange Act Release No. 84103 (September 12, 2018), 83 FR 47216 (September 8, 2018) (SR–NYSEArca–2018–66).

[8] *See* Securities Exchange Act Release No. 88833 (May 7, 2020), 85 FR 28676 (May 13, 2020) (SR–NYSEArca–2020–39).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] 15 U.S.C. 78f(b)(8).

undue burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act given that not a single ETP Holder has qualified for the credits under either of the pricing tiers that are the subject of this proposed rule change for the last six months. To the extent the proposed rule change places a burden on competition, any such burden would be outweighed by the fact that none of the pricing tiers proposed for deletion have served their intended purpose of incentivizing ETP Holders to more broadly participate on the Exchange. Moreover, ETP Holders can choose to trade on other venues to the extent they believe that the credits provided are too low or the qualification criteria are not attractive.

Intermarket Competition. 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. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. Market share statistics provide ample evidence that price competition between exchanges is fierce, with liquidity and market share moving freely from one execution venue to another in reaction to pricing changes. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe this proposed fee change would impose any burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [12] of the Act and subparagraph (f)(2) of Rule 19b–4 [13] 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) [14] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2021–78 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–2021–78. 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–2021–78, and should be submitted on or before October 7, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19971 Filed 9–15–21; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 15 U.S.C. 78s(b)(2)(B).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92932; File No. SR–FINRA–2021–014]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change Relating to Members' Filing Requirements Under FINRA Rule 6432 (Compliance With the Information Requirements of SEA Rule 15c2–11)

September 10, 2021.

I. Introduction

On June 9, 2021, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend member firms' filing requirements under FINRA Rule 6432 (Compliance with the Information Requirements of SEA Rule 15c2–11). The proposed rule change was published for comment in the **Federal Register** on June 15, 2021.[3] The Commission received one comment letter regarding the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 92139 (June 9, 2021), 86 FR 31774 (June 15, 2021) (''Notice). Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-finra-2021-014/srfinra2021014.htm.*

change,[4] and a response to the comment from FINRA.[5]

II. Summary of the Proposal

As further described below, in light of the Commission's recent amendments to Rule 15c2–11 under the Exchange Act,[6] FINRA proposes to amend members' filing requirements under FINRA Rule 6432 (Compliance with the Information Requirements of SEA Rule 15c2–11), including (i) the addition of a requirement that a qualified inter-dealer quotation system (''Qualified IDQS'')[7] submit a modified Form 211 filing to FINRA in connection with each initial information review that it conducts; (ii) the addition of a requirement that a Qualified IDQS that makes a certain publicly available determination under Rule 15c2–11 submit a daily security file to FINRA containing applicable summary information for all securities quoted on its system; and (iii) other changes to FINRA Rule 6432 and the Form 211 to further clarify the operation of the rule and conform it to amended Rule 15c2–11.

FINRA states that, if the proposed rule changes are approved by the Commission, FINRA will publish a *Regulatory Notice* with technical details on the revised standard Form 211, modified Form 211, and daily file submission process.[8] In addition, FINRA states that the effective date of any such rule changes would be the same date as the general compliance date of the Commission's amendments to Rule 15c2–11 (except for paragraph (b)(5)(i)(M) of Rule 15c2–11),[9] including any extensions to such compliance date.

A. Proposed Modified Form 211 Submission Requirement

FINRA Rule 6432 sets forth the standards applicable to member firms quoting equity securities for demonstrating compliance with Rule 15c2–11 under the Exchange Act, unless an exception or exemption is available. Under FINRA Rule 6432, no member may publish quotations for a non-exchange-listed security[10] in a quotation medium unless the member has demonstrated compliance with FINRA Rule 6432 and the applicable requirements for information maintenance under Rule 15c2–11 by making a filing with, and in the form required by, FINRA (*i.e.,* the Form 211). FINRA states that it uses the Form 211 in connection with its oversight of member compliance with Rule 15c2–11.[11] FINRA also states that the Form 211 is designed to gather pertinent information regarding the subject issuer and its security, the member's knowledge of and relationship to the issuer, and the member's intended quotation activities with respect to the security.[12]

To account for the new role of a Qualified IDQS resulting from the amendments to Rule 15c2–11,[13] FINRA proposes to amend FINRA Rule 6432 by adding a new provision to establish an after-the-fact filing requirement for a Qualified IDQS that performs an initial review under Rule 15c2–11(a)(2). This new filing requirement would supplement FINRA's existing standard Form 211 review process for quoting broker-dealer members, which would continue to apply where a broker-dealer is not relying on a Qualified IDQS's publicly available determination with respect to an initial review of issuer information.[14]

FINRA states its belief that requiring a Qualified IDQS to submit a modified Form 211 is appropriate because the submission would provide FINRA with information with which to perform oversight of a Qualified IDQS's compliance with Rule 15c2–11's requirements for an initial information review, without involving any additional delay for FINRA to review and process the form prior to members being permitted to initiate quotations in reliance on the Qualified IDQS's publicly available determination.[15] In addition, FINRA states that the modified Form 211 requirement, together with the required submission of the daily file, as discussed below in Part II.B, would make a focused, after-the-fact review more manageable and able to be accomplished in a shorter period of time.[16]

Under the proposed provision, a Qualified IDQS must demonstrate compliance with Rule 15c2–11 by making a filing with, and in the form required by FINRA, no later than 6:30:00 p.m. Eastern Time on the business day following the Qualified IDQS's publicly available determination under Rule 15c2–11(a)(2) (*i.e.,* a ''modified Form 211'' filing). Like the standard Form 211, the modified Form 211 would contain requests for the items of information specified in Rule 15c2–11(b) with respect to the type of issuer involved.[17] In addition, as

[4] Letter from OTC Link LLC to SEC (July 6, 2021) (''OTC Link Letter'').

[5] *See* Letter from Robert McNamee to Vanessa Countryman (August 4, 2001) (''FINRA Response'').

[6] Rule 15c2–11 specifies key, basic issuer information that must be obtained and reviewed before a broker-dealer may initiate (or resume) quotations for a security in a market other than a national securities exchange, subject to exception. On October 27, 2020, the Commission published in the **Federal Register** amendments to Rule 15c2–11. *See* Exchange Act Release No. 89891 (Sept. 16, 2020), 85 FR 68124 (Oct. 27, 2020) (''Rule 15c2–11 Adopting Release''). Among the amendments to Rule 15c2–11 are those to permit broker-dealers to publish quotations in reliance on a qualified interdealer quotation system's publicly available determination that it complied with the rule's information review requirement, *see* 17 CFR 240.15c2–11(a)(1)(ii), as well as those that provide certain requirements in order for the qualified interdealer quotation system to make such a publicly available determination, *see* 17 CFR 240.15c2–11(a)(2)(i) through (iv). In addition, the amendments allow broker-dealers to publish quotations in reliance on a qualified interdealer quotation system's publicly available determination that certain exceptions apply, *see* 17 CFR 240.15c2–11(f)(7), and to rely on a publicly available determination as to whether certain issuer information is current and publicly available, *see* 17 CFR 240.15c2–11(f)(2)(iii)(B), (f)(3)(ii)(A). The amendments set forth certain policies and procedures requirements in order for the qualified interdealer quotation system to make any such publicly available determination. *See* 17 CFR 240.15c2–11(a)(3).

[7] As discussed below in Part II.C, FINRA proposes to define in FINRA Rule 6432(g) the term ''qualified inter-dealer quotation system'' as ''any interdealer quotation system that meets the definition of an 'alternative trading system' under [Rule] 300(a) of [Regulation ATS] and operates pursuant to the exemption from the definition of an 'exchange' under [Rule] 3a1–1(a)(2) of [the Exchange Act].'' This definition would track the Commission's definition of the term ''qualified interdealer quotation system'' in Exchange Act Rule 15c2–11. *See* 17 CFR 240.15c2–11(e)(6).

[8] *See* Notice, *supra* note 3, at 31775 n.16.

[9] *See* Rule 15c2–11 Adopting Release, *supra* note 6 at 68172. The compliance date for the amendments to Rule 15c2–11 (except for provisions involving paragraph (b)(5)(i)(M)) is September 28, 2021.

[10] The term ''non-exchange-listed security'' is defined in FINRA Rule 6432(e) as any equity security, other than a Restricted Equity Security, that is not traded on any national securities exchange. A ''Restricted Equity Security'' means any equity security that meets the definition of ''restricted security'' contained in Rule 144(a)(3) under the Securities Act of 1933. *See* 17 CFR 230.144.

[11] *See* Notice, *supra* note 3, at 31775.

[12] *See id.*

[13] *See supra* note 6.

[14] *See* Notice, *supra* note 3, at 31775. A quoting broker-dealer member relying on a Qualified IDQS would not be required to separately submit any sort of Form 211 in connection with the publication of its initial quotation pursuant to Rule 15c2–11(a)(1)(ii). *See id.,* at 31775 n.19. FINRA states that permitting quoting members to rely on a Qualified IDQS's publicly available determination to initiate quotations in a security is consistent with the Commission's goals to reduce burdens on broker-dealers while maintaining investor protection. *See id.,* at 31776.

[15] *See id.,* at 31775. Broker-dealers must initiate their quotations in reliance on any such publicly available determination within three business days after the publicly available determination is made. *See* 17 CFR 240.15c2–11(a)(1)(ii)(B).

[16] *See* Notice, *supra* note 3, at 31776.

[17] FINRA proposes several technical, non-substantive changes to update cross-references to the renumbered and re-lettered provisions of Rule 15c2–11 in light of the amendments. FINRA states that both the modified and standard Form 211 would conform to the Commission's amendments to

Continued

discussed in Part II.C below, the modified Form 211, like the standard Form 211, must be reviewed and signed by a principal of the Qualified IDQS, who must certify, among other things, that neither the firm nor its associated persons have accepted or will accept any payment or other consideration prohibited by FINRA Rule 5250 for filing the Form 211.[18]

B. Proposed Daily Security File Submission Requirement

To account for the new role of a Qualified IDQS, FINRA also proposes to amend Supplementary Material .02 to FINRA Rule 6432 by requiring any Qualified IDQS that makes one or more publicly available determinations described in any of the following provisions to submit to FINRA a daily security file containing certain information: Rule 15c2–11(a)(2) (compliance with Rule 15c2–11's information review requirement); (f)(2)(iii)(B) (information is current and publicly available); (f)(3)(ii)(A) (information is no longer current and publicly available); or (f)(7) (the availability of the exchange-traded security exception, the ''piggyback'' exception, the municipal security exception, or the ADTV and asset test exception). FINRA states that it would use the information contained in the daily file as part of its oversight program to perform surveillance and periodic reviews of Qualified IDQS and quoting member compliance with Rule 15c2–11.[19]

Under this proposed requirement, the daily security file must contain the following information for all non-exchange-listed equity securities quoted on the Qualified IDQS's system:

- Security symbol;
- Issuer name;
- If the non-exchange-listed equity security is being quoted pursuant to a processed Form 211 under FINRA Rule 6432(a);
- If applicable, the type of publicly available determination made by the Qualified IDQS (*e.g.,* that the Qualified IDQS conducted an initial review pursuant to Rule 15c2–11(a)(2), that the specified information is current and publicly available pursuant to Rule 15c2–11(f)(2)(iii)(B) or (f)(3)(ii)(A), or that an exception under Rule 15c2–11(f)(7) is available) and the date on which such publicly available determination was made by the Qualified IDQS;
- With respect to a non-exchange-listed equity security for which the Qualified IDQS has made a publicly available determination under Rule 15c2–11(f)(7) relating to the availability of the piggyback exception under Rule 15c2–11(f)(3), whether the issuer is a shell company and, if a shell company, the number of days remaining in the applicable 18-month period under Rule 15c–2–11(f)(3)(i)(B)(2);
- If applicable, that the security is being quoted pursuant to an exception that does not rely on the Qualified IDQS's publicly available determination and, if so, identify the exception relied upon by the subscriber; and
- Such other information as specified by FINRA in a *Regulatory Notice* (or similar communication).

C. Proposed Clarifying and Conforming Amendments

In addition to the proposals discussed above with respect to member Qualified IDQS requirements, FINRA proposes several amendments to clarify the operation of FINRA Rule 6432 and conform the rule provisions to Rule 15c2–11, as amended. First, with respect to existing member obligations, FINRA proposes to clarify that a member firm must receive notification from FINRA that a standard Form 211 has been processed (i) before initiating or resuming quotations in a quotation medium for a security, as in paragraph (a) of FINRA Rule 6432; and (ii) before entering a priced quotation for the security, as in paragraph (d) of FINRA Rule 6432.[20] As part of this rule change, FINRA proposes to delete the requirement that the Form 211 be received by FINRA at least three business days before the filing firm's quotation is published or displayed.

Second, to ease burdens on broker-dealers when filing a Form 211, FINRA proposes in paragraph (c)(1)[21] to expand FINRA Rule 6432's treatment currently allowed for documents made available through the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system. In particular, FINRA proposes to allow a member firm or Qualified IDQS submitting a Form 211, in lieu of filing a copy of the applicable specified issuer information, to include identifying information[22] for each issuer report or statement upon which the filer relied in satisfying the requirements of Rule 15c2–11's review of issuer information, with respect to information that is publicly available through the website of a Qualified IDQS or its affiliate broker-dealer (but is not available on EDGAR). FINRA states its belief that this expansion of treatment is appropriate in light of the new role of a Qualified IDQS under the amendments to Rule 15c2–11.[23]

Third, FINRA proposes in new paragraph (g) of FINRA Rule 6432 to provide the same definition for term ''qualified inter-dealer quotation system'' that the term ''qualified interdealer quotation system'' has under Rule 15c2–11(e)(6). Finally, to assist with oversight of member firm compliance with Rule 15c2–11, FINRA proposes to require that members include in the standard and modified Form 211 the names of all officers and directors of the subject issuer.

III. Discussion and Commission Findings

After carefully reviewing the proposed rule changes, the comment letter, and the FINRA letter, the Commission finds that the proposed rule changes are consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association.[24] In particular, the Commission finds that the proposed rule changes are consistent with Section 15A(b)(6) of the Exchange Act[25] in that they are designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In addition, the Commission finds that the proposed rule changes are consistent with Section 15A(b)(11) of the Exchange Act[26] in that they include provisions designed to produce fair and informative quotations,

Rule 15c2–11, as applicable. *See id.,* at 31776 n.20. In addition, in light of the addition of the modified Form 211 provision in FINRA Rule 6432(b), FINRA is re-letting all FINRA Rule 6432 paragraphs that follow that provision. Finally, FINRA proposes a technical, non-substantive change to correct FINRA Rule 6432.01 to read ''.01'' rather than ''01.'' per FINRA rulebook style. *See id.,* at 31776.

[18] *See id.; Regulatory Notice* 14–26 (June 2014) (stating that the ''Rule 5250 prohibition on receiving payments for market making includes within its scope the receipt of payments for submitting a Form 211 to FINRA pursuant to Rule 6432''); *see also* FINRA Rule 5250 (Payments for Market Making).

[19] *See* Notice, *supra* note 3, at 31776.

[20] FINRA proposes a technical, non-substantive change to re-letter existing paragraph (c) to paragraph (d). *See supra* note 17.

[21] FINRA proposes a technical, non-substantive change to re-letter existing paragraph (b)(1) to paragraph (c)(1). *See supra* note 17.

[22] Such identifying information may include the type of report, report date, the permanent website address of the location of the information on the website of the Qualified IDQS or its affiliate broker-dealer, and any other information as may be requested by FINRA.

[23] *See* Notice, *supra* note 3 at 31776.

[24] In approving this proposed rule change, the Commission has considered the proposed rule changes' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78o–3(b)(6).

[26] 15 U.S.C. 78o–3(b)(11).

to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

A. Proposed Modified Form 211 Submission Requirement

The Commission finds that the proposed requirements set forth in FINRA Rule 6432(b), with respect to the modified Form 211 submission, are consistent with the Exchange Act.

First, the proposed requirement on any member Qualified IDQS that makes a publicly available determination pursuant to Rule 15c2–11(a)(2) to file a Form 211 with FINRA to demonstrate compliance with Rule 15c2–11 is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. As FINRA noted, ''[t]he amendments to Rule 15c2–11 make substantial changes to the prior framework.'' [27] This filing requirement, therefore, was proposed primarily to account for the new role of a Qualified IDQS under Rule 15c2–11's amendments.[28] FINRA's proposal to extend the existing obligation for any member firm representing that it complied with the requirements of Rule 15c2–11's review of specified issuer information to any member Qualified IDQS that makes a publicly available determination that it complied with the requirements for such review [29] would update FINRA's framework for its oversight of member Qualified IDQSs, facilitate its oversight efforts, and enhance investor protection.[30]

Second, the requirement for a member Qualified IDQS's modified Form 211 to be received by FINRA no later than 6:30:00 p.m. Eastern Time on the business day following the Qualified IDQS's publicly available determination made pursuant to Rule 15c2–11(a)(2) is designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations. The Commission believes that the proposed deadline for the modified Form 211 filing (*i.e.,* after-the-fact) appropriately balances the protection of investors, with respect to the prevention of fraudulent and manipulative schemes involving fictitious quotations, while preventing the potential for undue delay in the initiation of quoted markets following a Qualified IDQS's publicly available determination that it has complied with Rule 15c2–11's requirements for the review of specified issuer information.[31] Further, the Commission believes that the after-the-fact nature of the submission of the modified Form 211, together with the requirement for the submission of a daily security file, could facilitate FINRA's oversight of a member Qualified IDQS's compliance with the Rule 15c2–11 review by making FINRA's efforts more focused and efficient.

Finally, not requiring quoting member firms to file any Form 211 if they are relying on a Qualified IDQS's publicly available determination regarding its compliance with Rule 15c2–11's review of specified issuer information is designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotation. The Commission believes that its goal, among others, in amending Rule 15c2–11 to reduce burdens on broker-dealers while maintaining investor protection [32] would be furthered, in part, by the modified Form 211 submission. In light of this requirement, the Commission believes that also requiring quoting member firms (relying on a Qualified IDQS's publicly available determination regarding its review of issuer information) to file a Form 211 would be redundant, including with respect to the information provided, without necessarily providing any new information for FINRA or the Commission to use in its oversight efforts to prevent fictitious or misleading quotations and to protect investors.

B. Proposed Daily Security File Submission Requirement

The Commission finds that the proposed requirements set forth in Supplementary Material .02 to FINRA Rule 6432, with respect to the daily file submission requirement for any member Qualified IDQS that makes certain publicly available determinations, are consistent with the Exchange Act.

The proposed requirement under Supplementary Material .02 regarding the submission of a daily security file is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Under this proposed requirement, a member Qualified IDQS must submit a daily file containing certain information [33] regarding all non-exchange-listed equity securities quoted on its system if the Qualified IDQS makes a publicly available determination involving any of the following: Whether the Qualified IDQS complied with the requirements of Rule 15c2–11's review of specified issuer information; whether an issuer's information is current and publicly available, pursuant to Rule 15c2–11's unsolicited quotation exception or piggyback exception; or whether Rule 15c2–11's exchange-traded security exception, municipal security exception, piggyback exception, or ADTV and asset test exception is available.

The proposed daily security file list includes basic information regarding a quoted security, its issuer, and, as applicable, the publicly available determination or exception that already would be preserved as part of a Qualified IDQS's compliance with its existing recordkeeping requirement under Rule 15c2–11.[34] The Commission

[27] *See* Notice, *supra* note 3, at 31774.

[28] *See id.,* at 31775.

[29] FINRA Rule 6432 would require a principal of the filing member Qualified IDQS to review and sign the modified Form 211, which would also include a certification that neither the firm nor its associated persons have accepted or will accept any payment or other consideration prohibited by FINRA Rule 5250 for filing the Form 211. One commenter stated that FINRA Rule 5250 does not and should not apply to a Qualified IDQS filing a Form 211. *See* OTC Link Letter. The question of whether Rule 5250 prohibits the Qualified IDQS from accepting issuer payments for filing Form 211 in connection with its review under 15c2–11(a)(2) is an issue concerning the interpretation of Rule 5250 (not Rule 6432) and is outside of the scope of FINRA's proposal.

[30] For example, FINRA stated that it would use the modified Form 211 filings submitted by a Qualified IDQS to assess periodically the adequacy of the Qualified IDQS's reviews. *See id.,* at 31775.

[31] Broker-dealers must initiate their quotations within three business days after the Qualified IDQS makes a publicly available determination regarding its review of issuer information. *See* 17 CFR 240.15c2–11(a)(1)(ii)(B). If broker-dealers needed to wait for notification from FINRA that the Qualified IDQS's form has been processed before initiating or resuming quotations, as with the timing requirement of the standard Form 211, more than three days could elapse. In such case, the Qualified IDQS may need to repeat its review, a broker-dealer may need to review the issuer information itself to initiate a quoted market, or no market may develop whatsoever. Such a result would be inconsistent with the amendments' goal, among others, of easing broker-dealers' burdens where Rule 15c2–11's investor protections can be achieved by alternative means. *See, e.g.,* Rule 15c2–11 Adopting Release, *supra* note 6, at 68131.

[32] *See* Rule 15c2–11 Adopting Release, *supra* note 6, at 68131.

[33] See *supra* Part II.B for a list of the specified information.

[34] *See generally* 17 CFR 240.15c2–11(d) (requiring, among other things, the preservation of information related to a publicly available determination that the rule's requirements for the review of specified information have been fulfilled, as well as information supporting a publicly available determination as to whether an issuer's information is current and publicly available or

Continued

believes that the daily security file will facilitate FINRA's oversight efforts where FINRA might otherwise lack efficient access to such information. In this regard, FINRA's access to the daily security file could aid its oversight efforts and protect investors by providing FINRA with a wider range of information to use in determining whether a Qualified IDQS has complied with its Rule 15c2–11 obligations (*e.g.,* with respect to making a certain type of publicly available determination) or whether a publicly available determination is being used in connection with a fraudulent and manipulative scheme.[35]

C. Proposed Clarifying and Conforming Amendments

The Commission finds that the proposed clarifying and conforming amendments set forth in FINRA Rule 6432 are consistent with the Exchange Act.

First, the proposed clarifying amendments to Rule 6432(a) and (d), with respect to the requirement that a member firm receive notification from FINRA that its standard Form 211 has been processed before initiating or resuming quotations in a quotation medium or before entering a priced quotation for the security, respectively, are designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA states that these amendments are proposed to clarify existing member firm obligations when filing a standard Form 211 under FINRA Rule 6432.[36] The Commission believes that stating explicitly what event must occur before a member firm may begin publishing quotations provides a greater degree of clarity as to when a member firm may initiate or resume quotations than stating when the standard Form 211 must be received by FINRA does. These clarifications could facilitate broker-dealers' compliance measures and make them more efficient by removing any uncertainty as to when quotations may begin. In addition, these clarifications could protect investors by preventing the likelihood that a member firm would initiate a quoted market before its compliance with Rule 15c2–11's requirements for an initial information review have been subject to oversight and verified.

Second, the proposed requirements in FINRA Rule 6432(c)(1), with respect to filing member firms' ability to point FINRA to issuer information publicly available on the website of a Qualified IDQS or its affiliate broker-dealer, including the manner for doing so, are designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the ability of a member firm or Qualified IDQS to include in its Form 211 filing certain identifying information for the issuer reports or statements upon which it relied in complying with Rule 15c2–11's requirements for reviewing issuer information appropriately balances the protection of investors while reducing compliance burdens on the filing member. Specifically, this rule change would allow any such member to point FINRA to the applicable issuer information that is publicly available on a regulated market participant's website,[37] in lieu of filing a copy of the applicable issuer reports or statements, while providing FINRA with an alternative means to conduct its oversight of the member's compliance with Rule 15c2–11 in order to protect investors. In addition, the Commission believes that the list of identifying information (*i.e.,* the type of report, report date, the permanent website address of the location of the information on the website of the Qualified IDQS or its affiliate broker-dealer, and any other information as may be requested by FINRA) may aid FINRA in accessing the applicable issuer reports or statements relied upon as part of its oversight efforts.

Third, the proposed definition in FINRA Rule 6432(g) of the term ''qualified inter-dealer quotation system'' is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA's proposed definition tracks the definition of the term ''qualified interdealer quotation system'' that is provided in Rule 15c2–11(e)(6). This uniformity between FINRA Rule 6432 and Rule 15c2–11 under the Exchange Act could facilitate compliance efforts on the part of member firms and Qualified IDQSs due to an enhanced understanding of the application of the two rules' requirements regarding that term. Similarly, such uniformity could facilitate FINRA's oversight by providing an efficient means to monitor compliance with Rule 15c2–11. The Commission continues to believe that the regulatory requirements for a member that meets the definition of a Qualified IDQS—and the concomitant FINRA and Commission oversight of this type of entity—would help to ensure investor protection and to prevent fraud and manipulation.[38]

Finally, the proposal in FINRA Rule 6432(c)(2) to require any member firm or Qualified IDQS to include in the standard or modified Form 211, as applicable, a list of all officers and directors of the subject issuer is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that this list appropriately captures persons who manage a company or have a greater degree of access to issuer information and who may have a heightened incentive to engage in fraudulent or manipulative conduct.[39] Such additional information, therefore, could aid FINRA in its oversight of Rule 15c2–11 compliance and the market for an issuer's security.

IV. Conclusion

It is therefore ordered that, pursuant to Section 19(b)(2) of the Exchange Act,[40] the proposed rule change (File No. SR–FINRA–2021–014) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19968 Filed 9–15–21; 8:45 am]

BILLING CODE 8011–01–P

whether certain of the rule's exceptions apply, as applicable).

[35] FINRA states that the daily security file information would provide consolidated daily Rule 15c2–11 compliance information to complement a member Qualified IDQS's modified Form 211 submission so that FINRA could have a more complete overview of the activities of its members in the over-the-counter market, including of a Qualified IDQS's compliance with Rule 15c2–11's obligations. *See* Notice, *supra* note 3, at 31776.

[36] *See id.*

[37] *See* Rule 15c2–11 Adopting Release, *supra* note 6, at 68144.

[38] *See id.,* at 68166.

[39] *See, e.g., id.,* at 68167.

[40] 15 U.S.C. 78s(b)(2).

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92934]

Order Granting Application by The Nasdaq Stock Market LLC and Nasdaq BX, Inc. for an Exemption Pursuant to Section 36(a) of the Exchange Act From the Rule Filing Requirements of Section 19(b) of the Exchange Act With Respect to Certain Rules Incorporated by Reference

September 10, 2021.

The Nasdaq Stock Market LLC (''Nasdaq'') and Nasdaq BX, Inc. (''BX'' and together with Nasdaq, the ''Exchanges'') have filed with the Securities and Exchange Commission (''Commission'') an application for an exemption under Section 36(a)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] from the rule filing requirements of Section 19(b) of the Exchange Act[2] with respect to certain rules of the Financial Industry Regulatory Authority, Inc. (''FINRA'') that the Exchanges seek to incorporate by reference.[3] Section 36 of the Exchange Act, subject to certain limitations, authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class thereof, from any provision of the Exchange Act or rule thereunder, if necessary or appropriate in the public interest and consistent with the protection of investors.

The Exchanges filed proposed rule changes under Section 19(b) of the Exchange Act to amend General 9, Section 18 (Payments for Market Making) of their respective rulebooks to incorporate by reference FINRA 5250 (Payments for Market Making).[4] Because FINRA Rule 5250 references the definition of ''affiliate'' in FINRA Rule 5121, the proposed rule changes also would incorporate by reference the definition of ''affiliate'' and related definitions within FINRA Rule 5121. As such, the Exchanges' members and persons associated with a member would be required to comply with FINRA Rule 5250 and the definition of ''affiliate'' and related definitions within FINRA Rule 5121 as though such rules are part of the Exchanges' rulebooks.

The Exchanges have requested, pursuant to Rule 0–12 under the Exchange Act,[5] that the Commission grant the Exchanges an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to the Exchanges' rules that are effected solely by virtue of a change to FINRA Rule 5250 or to the definition of ''affiliate'' and related definitions within FINRA Rule 5121, which are incorporated by reference.[6] Specifically, the Exchanges request that they be permitted to incorporate by reference changes made to FINRA Rule 5250 and the definition of ''affiliate'' and related definitions within FINRA Rule 5121 that are cross-referenced in General 9, Section 18 of their respective rulebooks without the need for the Exchanges to file separately the same proposed rule changes pursuant to Section 19(b) of the Act.[7]

The Exchanges represent that FINRA Rule 5250 and the definition of ''affiliate'' and related definitions within FINRA Rule 5121 are regulatory rules and not trading rules.[8] The Exchanges represent that, as a condition to the requested exemption from Section 19(b) of the Exchange Act, the Exchanges will provide written notice to their applicants, members, and associated persons whenever FINRA proposes a change to a cross-referenced rule.[9] The Exchanges state that such notice will alert their applicants, members, and associated persons to the proposed FINRA rule change and give them an opportunity to comment on the proposal.[10] The Exchanges further represent that they will inform applicants, members, and associated persons in writing when the Commission approves any such proposed rule changes.[11]

According to the Exchanges, this exemption is necessary and appropriate because it would result in the Exchanges' General 9, Section 18 being consistent with the relevant cross-referenced FINRA rules at all times, thus ensuring consistent regulation of joint members of the Exchanges and FINRA with respect to payments for market making.[12]

The Commission has issued exemptions similar to the Exchanges' request.[13] In granting similar exemptions, the Commission stated that it would consider similar future exemption requests, provided that:

- An SRO wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SRO(s), together with the rules it wants to incorporate by reference, and otherwise has complied with the procedural requirements set forth in the Commission's release governing procedures for requesting exemptive orders pursuant to Rule 0–12 under the Exchange Act;[14]
- The incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (*e.g.,* the SRO has requested incorporation of rules such as margin, suitability, or arbitration); and
- The incorporating SRO has reasonable procedures in place to

[1] 15 U.S.C. 78mm(a)(1).

[2] 15 U.S.C. 78s(b).

[3] *See* Letter from Angela S. Dunn, Principal Associate General Counsel, Nasdaq, to J. Matthew DeLesDernier, Assistant Secretary, Commission, dated June 14, 2021 (''Exemptive Request'').

[4] *See* Securities Exchange Act Release Nos. 92242 (June 23, 2021), 86 FR 34286 (June 29, 2021) (SR–NASDAQ–2021–051); 92243 (June 23, 2021), 86 FR 34288 (June 29, 2021) (SR–BX–2021–029). Although the proposed rule changes were filed pursuant to Section 19(b)(3)(A) of the Exchange Act, and thereby became immediately effective upon filing with the Commission, the Exchanges stipulated in the proposed rule changes that the proposals would not be operative until the Commission grants this Exemptive Request.

[5] 17 CFR 240.0–12.

[6] *See* Exemptive Request, *supra* note 3, at 2.

[7] *See id.*

[8] *See id.* at 2, n.7. The Exchanges also state that they are not ''cherry picking'' because the Exchanges would be incorporating the entire FINRA Rule 5250, and the definition of ''affiliate'' is explicitly cross-referenced within FINRA Rule 5250. *See id.*

[9] *See id.* at 2–3. The Exchanges represent that they will provide such notice via a posting on the same website location where the Exchanges post their own rule filings pursuant to Rule 19b–4(1) within the time frame required by such rule. *See id.* at 3, n.8. The website posting will include a link to the location on FINRA's website where the applicable proposed rule change is posted. *See id.*

[10] *See id.* at 3.

[11] *See id.*

[12] *See id.* at 2.

[13] *See, e.g.,* Securities Exchange Act Release Nos. 83296 (May 21, 2018), 83 FR 24362 (May 25, 2018) (order granting NYSE National, Inc.'s exemptive request relating to rules of FINRA incorporated by reference); 83040 (April 12, 2018), 83 FR 17198 (April 18, 2018) (order granting MIAX PEARL, LLC's exemptive request relating to rules of the Miami International Securities Exchange, LLC incorporated by reference); 76998 (January 29, 2016), 81 FR 6066, 6083–84 (February 4, 2016) (order granting application for registration as a national securities exchange of ISE Mercury, LLC and exemptive request relating to rules of certain self-regulatory organizations (''SROs'') (including FINRA) incorporated by reference); 61534 (February 18, 2010), 75 FR 8760 (February 25, 2010) (order granting BATS Exchange, Inc.'s exemptive request relating to rules incorporated by reference by the BATS Exchange Options Market rules) (''BATS Options Market Order''); 61152 (December 10, 2009), 74 FR 66699, 66709–10 (December 16, 2009) (order granting application for registration as a national securities exchange of C2 Options Exchange, Incorporated and exemptive request relating to rules of the Chicago Board Options Exchange, Incorporated, incorporated by reference).

[14] *See* 17 CFR 240.0–12 and Securities Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998) (Commission Procedures for Filing Applications for Orders for Exemptive Relief Pursuant to Section 36 of the Exchange Act; Final Rule).

provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.[15]

The Commission believes that the Exchanges have satisfied each of these conditions. The Commission also believes that granting the Exchanges an exemption from the rule filing requirements under Section 19(b) of the Exchange Act will promote efficient use of the Commission's and the Exchanges' resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO.[16] The Commission therefore finds it appropriate in the public interest and consistent with the protection of investors to exempt the Exchanges from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the above-described FINRA rules they have incorporated by reference. This exemption is conditioned upon the Exchanges promptly providing written notice to their applicants, members, and associated persons whenever FINRA changes a rule that the Exchanges have incorporated by reference.

Accordingly, *it is ordered,* pursuant to Section 36 of the Exchange Act,[17] that the Exchanges are exempt from the rule filing requirements of Section 19(b) of the Exchange Act solely with respect to changes to the rules identified in the Exemptive Request, provided that the Exchanges promptly provide written notice to their applicants, members, and associated persons whenever FINRA proposes to change a rule that the Exchanges have incorporated by reference.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19970 Filed 9–15–21; 8:45 am]

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[15] *See* BATS Options Market Order, *supra* note 13 (citing Securities Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004) (order granting exemptive request relating to rules incorporated by reference by several SROs) (''2004 Order'')).

[16] *See* BATS Options Market Order, *supra* note 13, 75 FR at 8761; *see also* 2004 Order, *supra* note 15, 69 FR at 8502.

[17] 15 U.S.C. 78mm.

[18] 17 CFR 200.30–3(a)(76).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17149 and #17150; NEW YORK Disaster Number NY–00209]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of New York

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA–4615–DR), dated 09/05/2021.

Incident: Remnants of Hurricane Ida.

Incident Period: 09/01/2021 through 09/03/2021.

DATES: Issued on 09/12/2021.

Physical Loan Application Deadline Date: 11/04/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 06/06/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New York, dated 09/05/2021, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Suffolk, Sullivan.

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. 2021–20056 Filed 9–15–21; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17145 and #17146; NEW JERSEY Disaster Number NJ–00063]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of New Jersey

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Jersey (FEMA–4614–DR), dated 09/05/2021.

Incident: Remnants of Hurricane Ida.

Incident Period: 09/01/2021 through 09/03/2021.

DATES: Issued on 09/10/2021.

Physical Loan Application Deadline Date: 11/04/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 06/06/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New Jersey, dated 09/05/2021, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Essex, Hudson, Mercer, Union.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Barbara Carson,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2021–19989 Filed 9–15–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17167 and #17168; CALIFORNIA Disaster Number CA–00345]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of California

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 California (FEMA–4619–DR), dated 09/12/2021.

Incident: Caldor Fire.

Incident Period: 08/14/2021 and continuing.

DATES: Issued on 09/12/2021.

Physical Loan Application Deadline Date: 11/12/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 06/13/2022.

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 09/12/2021, 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: El Dorado.

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 17167 5 and for economic injury is 17168 0.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2021–20054 Filed 9–15–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17165 and #17166; PENNSYLVANIA Disaster Number PA–00113]

Presidential Declaration of a Major Disaster for the Commonwealth of Pennsylvania

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania. (FEMA–4618–DR), dated 09/10/2021.

Incident: Remnants of Hurricane Ida.

Incident Period: 08/31/2021 to 09/05/2021.

DATES: Issued on 09/10/2021.

Physical Loan Application Deadline Date: 11/09/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 06/10/2022.

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 09/10/2021, 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): Bucks, Chester, Delaware, Montgomery, Philadelphia, York.

Contiguous Counties (Economic Injury Loans Only):

Pennsylvania: Adams, Berks, Cumberland, Dauphin, Lancaster, Lehigh, Northampton.

Delaware: New Castle.

Maryland: Baltimore, Carroll, Cecil, Harford.

New Jersey: Burlington, Camden, Gloucester, Hunterdon, Mercer, Warren.

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 17165 8 and for economic injury is 17166 0.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2021–20047 Filed 9–15–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17147 and #17148; NEW YORK Disaster Number NY–00208]

Presidential Declaration Amendment of a Major Disaster for the State of New York

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 New York (FEMA–4615–DR), dated 09/05/2021. Incident: Remnants of Hurricane Ida. Incident Period: 09/01/2021 through 09/03/2021.

DATES: Issued on 09/10/2021.

Physical Loan Application Deadline Date: 11/04/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 06/06/2022.

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 New York, dated 09/05/2021, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Nassau.

Contiguous Counties (Economic Injury Loans Only):

New York: Suffolk.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Esigned—Barbara Carson

Barbara Carson,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2021–19990 Filed 9–15–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17145 and #17146; NEW JERSEY Disaster Number NJ–00063]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of New Jersey

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Jersey (FEMA–4614–DR), dated 09/05/2021.

Incident: Remnants of Hurricane Ida.

Incident Period: 09/01/2021 through 09/03/2021.

DATES: Issued on 09/11/2021.

Physical Loan Application Deadline Date: 11/04/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 06/06/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New Jersey, dated 09/05/2021, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Morris.

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. 2021–20055 Filed 9–15–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17143 and #17144; NEW JERSEY Disaster Number NJ–00062]

Presidential Declaration Amendment of a Major Disaster for the State of New Jersey

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–4614–DR), dated 09/05/2021.

Incident: Remnants of Hurricane Ida.

Incident Period: 09/01/2021 through 09/03/2021.

DATES: Issued on 09/11/2021.

Physical Loan Application Deadline Date: 11/04/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 06/06/2022.

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 New Jersey, dated 09/05/2021, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Morris.

Contiguous Counties (Economic Injury Loans Only): All contiguous counties have previously been declared.

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. 2021–20049 Filed 9–15–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17143 and #17144; NEW JERSEY Disaster Number NJ–00062]

Presidential Declaration Amendment of a Major Disaster for the State of New Jersey

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 New Jersey (FEMA–4614–DR), dated 09/05/2021.

Incident: Remnants of Hurricane Ida.

Incident Period: 09/01/2021 through 09/03/2021.

DATES: Issued on 09/10/2021.

Physical Loan Application Deadline Date: 11/04/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 06/06/2022.

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 New Jersey, dated 09/05/2021, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Essex, Hudson, Mercer, Union.

Contiguous Counties (Economic Injury Loans Only):

New Jersey: Burlington.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Barbara Carson,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2021–19993 Filed 9–15–21; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17147 and #17148; NEW YORK Disaster Number NY–00208]

Presidential Declaration Amendment of a Major Disaster for the State of New York

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New York (FEMA–4615–DR), dated 09/05/2021. Incident: Remnants of Hurricane Ida. Incident Period: 09/01/2021 through 09/03/2021.

DATES: Issued on 09/12/2021.

Physical Loan Application Deadline Date: 11/04/2021.

Economic Injury (EIDL) Loan Application Deadline Date: 06/06/2022.

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 New York, dated 09/05/2021, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Suffolk.

Contiguous Counties (Economic Injury Loans Only): All contiguous counties previously declared.

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. 2021–20051 Filed 9–15–21; 8:45 am]

BILLING CODE 8026–03–P

SUSQUEHANNA RIVER BASIN COMMISSION

Advertisement for Mandatory Pre-Proposal Conference and Site Visit

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice includes an advertisement for a mandatory pre-proposal conference and site visit as outlined below.

DATES: October 21 and 28, 2021.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Marcia Hutchinson, telephone: (717) 238–0423, ext. 1318; fax: (717) 238–2436; email: *mhutchinson@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: The Susquehanna River Basin Commission (Commission) will be seeking a firm or firms to provide professional design services for a mine drainage (MD) conveyance system and active treatment plant to be located near Blossburg Borough, Tioga County, Pennsylvania. The Mandatory Pre-Proposal Conference (Conference) will take place on October 21, 2021 from 10:00 to 11:00 via an online platform of the SRBC's choosing. The SRBC will provide a brief presentation with the remainder of the time available for questions. The Mandatory Site Visit (Site Visit) will take place on October 28, 2021 from 10:00 to 15:00 in Blossburg, PA. The SRBC will not entertain questions during the Site Visit and interested entities are encouraged to prepare for inclement weather and difficult terrain.

To register for the Conference and Site Visit, interested entities should email the SRBC at *rsvp@srbc.net* by October 19, 2021 with the subject line ''Morris Run Conference'', and include the following information within the email: Names, email addresses and telephone numbers of all individuals interested in participating, as well as your company name and mailing address. Following the close of the registration period, registered entities will receive a web link and instructions to participate in the Conference.

The Commission will release its Request for Proposals for the work on October 14, 2021.

The principal items of work to be performed include:

- Design and permitting for a MD conveyance system and active treatment plant.
- Preparation of construction documents and construction bid administration.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* §§ 5.1, 7.1, 7.4 and 15.9.

Dated: September 13, 2021.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2021–20032 Filed 9–15–21; 8:45 am]

BILLING CODE 7040–01–P

TENNESSEE VALLEY AUTHORITY

Management of Floating Cabins

AGENCY: Tennessee Valley Authority.

ACTION: Issuance of record of decision.

SUMMARY: The Tennessee Valley Authority (TVA) has adopted a policy to prohibit the mooring of new floating cabins on its reservoirs and allow floating cabins that meet minimum standards, consistent with Section 9b of the TVA Act and Alternative B1 in the Floating Houses Policy Review Final Environmental Impact Statement (EIS) issued in February 2016.

FOR FURTHER INFORMATION CONTACT: David B. Harrell, Tennessee Valley Authority, 400 W Summit Hill Drive WT 11D–K, Knoxville, Tennessee 37902. Telephone: 865–632–1327. Email: *dbharrell@tva.gov* or *fc@tva.gov*.

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR 1505.2) and TVA procedures for implementing the National Environmental Policy Act (NEPA).

TVA is a multi-purpose federal agency that has been charged by Congress with promoting the wise use and conservation of the resources of the Tennessee Valley region, including the Tennessee River System. In carrying out this mission, TVA operates a system of dams and reservoirs on the Tennessee River and its tributaries for the purposes of navigation, flood control, and power production. Consistent with its mission, TVA also uses the system to improve water quality and water supply and to provide a wide range of public benefits, including recreation and natural resource stewardship.

To promote the unified development and regulation of the Tennessee River System, Congress directed TVA to approve obstructions across, along, or in the river system under Section 26a of the TVA Act. ''Obstruction'' is a broad term that includes, by way of example, boat docks, piers, boathouses, buoys, floats, boat launching ramps, fills, water intakes, devices for discharging effluents, bridges, aerial cables, culverts, pipelines, fish attractors, shoreline stabilization projects, channel excavations, and floating cabins. TVA also owns, as agent for the United States, much of the shoreland and inundated land along and under its reservoir system. In addition to TVA's Section 26a jurisdiction and the permit conditions issued pursuant to such jurisdiction, TVA has conditions and covenants in approved land use agreements with commercial marina operators and land and shoreline management policies that stipulate or restrict how TVA property and shoreline areas can be used.

In 1971, TVA amended its Section 26a regulations at 18 CFR part 1304 to prohibit all new nonnavigable houseboats. Since 1971, TVA has made minor changes to its regulations affecting nonnavigable houseboats, most notably in 1978, when TVA reiterated the prohibition of nonnavigable houseboats except for those in existence on or before February 15, 1978. TVA developed the following criteria in its regulations to distinguish between navigable vessels and prohibited, nonnavigable houseboats:

1. Built on a boat hull or on two or more pontoons;

2. Equipped with a motor and rudder controls located at a point on the houseboat from which there is forward visibility over a 180-degree range;

3. Compliant with all applicable State and Federal requirements relating to vessels;

4. Registered as a vessel in the State of principal use; and

5. State registration numbers clearly displayed on the vessel.

In recent years, numerous TVA reservoirs have experienced an

accelerated growth in the number of a new, unpermitted type of obstruction, referred to as floating houses or cabins, which are designed and used primarily for human habitation or occupation and not designed and used primarily for navigation and transportation on the water. (Although TVA has used the term floating houses in the past, including in the EIS, TVA now refers to these structures as floating cabins.) While floating cabins may have some attributes of real watercraft, the structures neither resemble nor have the performance characteristics of navigable boats and are in fact a modern version of the older nonnavigable houseboats that TVA prohibited. While this growth has generated additional sources of revenue for commercial marina operators, the proliferation of these structures has resulted in unanticipated uses of the reservoir system and has raised concerns about impacts to public health and safety, public recreation, navigation, and the environment.

Alternatives Considered

TVA considered six management alternatives in the Draft EIS and the Final EIS. The management alternatives range from an alternative that would require all nonnavigable houseboats and floating cabins to be removed from TVA reservoirs to an alternative which allows existing nonnavigable houseboats and floating cabins to remain on TVA reservoirs in perpetuity and allows for new floating cabins on all TVA reservoirs. The alternatives considered by TVA were:

The No Action Alternative—TVA would use discretion in enforcing its Section 26a regulations and would address specific problems caused by the mooring and use of these structures on a case-by-case basis.

Alternative A—TVA would approve and issue permits for the mooring of existing and new floating cabins that meet new minimum standards within permitted marina harbor limits, while noncompliant floating cabins would be removed from the reservoir. TVA would change its regulations to set minimum standards for safety and wastewater issues and would increase enforcement of the standards. Existing permits issued to nonnavigable houseboats would remain valid and would not be subject to new standards if they comply with existing permit conditions.

Alternative B1—TVA would approve and issue permits for the mooring of existing floating cabins that meet new minimum standards within permitted marina harbor limits. Permitted nonnavigable houseboats in compliance with their permits would continue to be allowed. TVA would prohibit new floating cabins and update its regulations to clarify that floating cabins are deemed nonnavigable. In the Draft EIS, TVA stated that its preference was to implement either Alternative B1 or B2 as its policy.

Alternative B2—TVA would approve existing floating cabins that meet new minimum standards and allow mooring within permitted marina harbor limits for a limited time period, after which all floating cabins must be removed from TVA reservoirs. TVA would continue to allow existing permitted nonnavigable houseboats that are compliant with their permit conditions but would require that they also be removed from TVA reservoirs within the time period. TVA would prohibit new floating cabins. In the Draft EIS, Alternative B2 included a 30-year sunset period by which time these structures would be removed. In the Final EIS, TVA identified Alternative B2 as its preferred policy and proposed a 20-year sunset period.

Alternative C—TVA would continue to allow permitted nonnavigable houseboats that comply with their current permit conditions. TVA would prohibit new and existing floating cabins. TVA would require removal of all unpermitted floating cabins and permitted nonnavigable houseboats that are noncompliant with their permit conditions in accordance with 18 CFR 1304.406. TVA would amend its regulations to clarify its navigability criteria but would not issue new standards.

Alternative D—TVA would use its existing Section 26a regulations and property rights to remove existing floating cabins and noncompliant nonnavigable houseboats and to stop the mooring of new floating cabins on its reservoirs. TVA also would use the conditions and covenants in its land use agreements with marina operators to implement this approach.

Environmentally Preferable Alternative

Alternative B2 is the alternative most likely to result in the fewest environmental impacts over time because all floating cabins and nonnavigable houseboats would eventually be removed from TVA reservoirs and environmental impacts associated with the mooring and use of these structures would cease after that period.

Public Involvement

TVA published a notice of intent to prepare the EIS in the **Federal Register** on April 14, 2014. TVA sought input from Federal and state agencies, Federally recognized Indian tribes, local organizations and individuals during a 90-day public scoping period. Public meetings were held in Jasper, Parsons, Kingsport, and Lafollette, Tennessee, and in Bryson City, North Carolina, with more than 200 attendees in total. The most common issues raised during the scoping period related to electrical safety, anchoring and mooring practices, water quality, the economic and financial importance of these structures to owners and marina operators, and the need for minimum standards, inspections, and enforcements. TVA also received recommendations for future management and policy alternatives. TVA prepared and published a Scoping Report that detailed the outreach and input during this period.

The NOA of the Draft EIS was published in the **Federal Register** on June 12, 2015. TVA held public meetings on the Draft EIS in July and August 2016 in Lafollette, Parsons, and Johnson City, Tennessee, and in Bryson City, North Carolina, and accepted comments until August 25, 2015. TVA received 151 comment submissions on the Draft EIS and provided responses in the Final EIS. In response to numerous substantive comments, TVA made revisions and corrections to the EIS. After considering the public's feedback on the Draft EIS and further internal deliberation, TVA modified Alternative B2 by applying a shorter period of time by which all nonnavigable houseboats and floating cabins must be removed from TVA reservoirs.

The NOA of the Final EIS was published in the **Federal Register** on February 26, 2016. In the Final EIS, TVA identified Alternative B2 as its preferred floating cabins policy alternative and stated its intent to formally establish regulations to implement the policy. After the publication of the NOA and prior to the TVA Board of Directors (Board) meeting on May 5, 2016, TVA staff and the Board received several hundred comment submissions primarily from owners of nonnavigable houseboats and floating cabins expressing opposition to the proposal to remove these structures after a 20-year period. Most individuals, however, stated that they recognized the need for greater oversight of floating cabins by TVA and for new standards. Elected officials, marina owners and operators, and several organizations also contacted TVA to state their opposition to the sunset provision. A few commenters asserted that the EIS does not conclude that nonnavigable houseboats and floating cabins have an effect on the environment (in particular, reservoir water quality), navigation, or

the public's use of reservoirs. While these commenters questioned the conclusions of TVA's environmental and economic analyses, the individuals did not submit additional information or scientific data for TVA to consider. TVA also received a petition with over 3,600 signatures and almost 950 comments from individuals opposing the sunset provision. Generally, these individuals supported Alternative B1.

At the May 5, 2016 meeting of the Board in Buchanan, Tennessee, 47 individuals spoke during the public listening session. Most speakers opposed the sunset provision of Alternative B2. Several speakers expressed support of the proposal.

Decision

At the May 2016 meeting, the Board approved Alternative B2, with some revisions, as TVA's policy for the management of nonnavigable houseboats and floating cabins, but chose to apply a 30-year sunset period rather than the 20-year period proposed in the Final EIS. The Board's decision adopted a policy to prohibit new floating cabins and allow existing non-navigable houseboats and floating cabins to remain in place for the 30-year period. The Board restated its earlier determinations that these structures pose safety, navigation, and water pollution risks and primarily benefit their owners at the expense of the public's right to use and enjoy public waters. The Board also directed staff to amend TVA's Section 26a regulations to implement the new policy, establish environmental and safety standards, and to institute a registration and inspection fee system for nonnavigable houseboats and existing floating cabins to secure the resources needed to enforce new standards and permit requirements.

On December 16, 2016, prior to TVA's issuance of a Record of Decision to reflect the Board's decision, the United States Congress enacted the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN Act) including Title IV Section 5003, which amended the TVA Act to include Section 9b. This new section of the TVA Act provides that TVA may approve and allow the use of floating cabins on waters under the jurisdiction of TVA as of December 16, 2016, if the floating cabin is maintained to reasonable health, safety and environmental standards, as required by the Board and if the owner pays a compliance fee if assessed by TVA. The WIIN Act stipulates that TVA may not require the removal of a floating cabin that was located on the Tennessee River System as of December 16, 2016: (1) For a period of 15 years if it was granted a permit by TVA before enactment, or (2) for a period of 5 years if it was not granted a permit by TVA before enactment. It further stipulates that TVA may establish regulations to prevent the construction of new floating cabins.

Consistent with the provisions of the WIIN Act, TVA completed two rulemaking processes to establish regulations to implement these provisions. In August 2018, TVA completed a rulemaking process to amend its regulations that govern floating cabins to clarify the types of structures that TVA will regulate as floating cabins and to prohibit new floating cabins from mooring on the Tennessee River System after December 16, 2016 (83 FR 44467, August 31, 2018). In September 2021, TVA completed a second rulemaking process to address the permitting process for existing floating cabins and establish health, safety, and environmental standards (86 FR 50625, September 10, 2021). These rules become effective on October 12, 2021.

During its environmental review, a primary environmental issue of concern was how floating cabin wastewater would be managed. Among the standards included in the new rules are requirements pertaining to water discharge, sewage, and wastewater, to ensure compliance with all applicable federal, state, and local laws and regulations. If a floating cabin is documented to be in violation of any federal, state, or local discharge or water quality regulation by the respective regulatory agency, TVA will have the authority to revoke the permit and require removal of the floating cabin from the Tennessee River System if the violation is not corrected as specified by the regulatory agency in accordance with the agency's requirements.

Because some provisions of the Board's approved alternative (Alternative B2) are inconsistent with provisions of the WIIN Act, TVA has decided to manage floating cabins in a manner that is substantively similar with Alternative B1 in the EIS, to the extent consistent with the WIIN Act. TVA will permit the mooring of existing floating cabins that meet minimum standards within permitted marina harbor limits. In addition, permitted nonnavigable houseboats in compliance with their permits would continue to be allowed.

Through the rulemaking processes, several standards established by TVA differ in minor ways from several of the potential standards included in the EIS, which served to assist TVA in analyzing the potential impacts associated with floating cabin management. In the final regulations, due to the elimination by the WIIN Act of the sunset period, TVA will require that owners of all pre-1978 nonnavigable houseboats be in compliance with the new standards established during the rulemaking, rather than maintain compliance with the previous permit conditions as contemplated in the EIS. Applying the new standards to older vessels has the potential to reduce environmental impacts because the new standards would be more stringent than the original permit conditions. In addition, at this time TVA will not apply an annual administrative fee to floating cabin owners and will lengthen the period of time provided to owners to make necessary upgrades to floating cabins to bring them into compliance with current standards; these provisions would result in minor reductions in the economic impacts to floating cabin owners that are described in the EIS. In the final regulations, TVA would allow exchanges or combinations of up to 1,000 square-foot maximum footprint of the cabin, as contemplated in the EIS, and up to another 400 square feet of attached structures (such as docks and boat slips). While the total spatial limit would be marginally greater than what was contemplated in the EIS, the intent of the exchange program has not changed, and TVA anticipates that the program would reduce or at least maintain the current total footprint of floating cabins and attached structures on reservoirs.

TVA also notes that since completion of the Final EIS in 2016, TVA staff conducted additional surveys of floating cabins and now estimate that as many as 20% more floating cabins are present on TVA reservoirs than estimated in the EIS (1,800). The exact number of cabins is difficult to determine, however. A greater number of floating cabins would increase the impacts described in the EIS. However, because impacts would be proportionately greater across the alternatives, the increase in the estimated number of floating cabins is unlikely to result in a change to conclusions made by TVA in its analysis.

TVA has considered whether this higher estimate and the minor differences between the established standards and the potential standards identified in the EIS necessitate the supplementation of the EIS. TVA has determined that such supplementation is not necessary because the changes are not substantial and the new information is not significant as is relevant to environmental concerns. The

information would not meaningfully alter TVA's analysis of impacts.

Mitigation Measures

During the environmental review, TVA identified and considered ways in which the impacts associated with the mooring and use of nonnavigable houseboats and floating cabins could be reduced and mitigated and included in the alternatives a number of proposals to reduce or eliminate ongoing or potential future impacts. TVA would require that owners of these structures adhere to permit conditions and minimum standards, many of which are intended to mitigate potential impacts to the environment. These minimum standards have been established through formal rulemaking processes and address water quality, flotation materials, public safety mooring practices, size, and navigation.

All floating cabins, including nonnavigable houseboats that have been previously permitted by TVA, must comply with the new standards by a specified deadline. Non-compliance with these terms could result in the termination or denial of the permit and removal from the reservoir, consistent with timeframes identified in the WIIN Act. The requirements and the successful implementation of an enforcement and compliance system will reduce environmental impacts associated with the mooring and use of these structures on TVA reservoirs. Because this is a programmatic NEPA review, measures to reduce potential environmental impacts of site-specific activities associated with this policy were not identified. Additional environmental reviews would be required if changes to specific marina operations are proposed affecting nonnavigable houseboats and floating cabins and additional mitigation measures may be identified.

To address potential effects of implementing the policy on cultural and historic resources, TVA completed a programmatic agreement in May 2016 with the State Historic Preservation Officers (SHPO) of Alabama, Georgia, Kentucky, North Carolina, Tennessee and Virginia. This programmatic agreement was amended and executed in January 2021. Under the agreement, TVA will consult with the appropriate SHPO and consulting parties when reviewing either plans submitted to TVA by marina owners related to harbor limits or plans for individual floating cabin owners moored outside of marina harbor limits.

Authority: 40 CFR 1505.2.

Allen A. Clare,

Vice President, River and Resources Stewardship.

[FR Doc. 2021–19999 Filed 9–15–21; 8:45 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Fiscal Year 2022 Tariff-Rate Quota Allocations for Raw Cane Sugar, Refined and Specialty Sugar, and Sugar-Containing Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative is providing notice of allocations of the Fiscal Year (FY) 2022 (October 1, 2021 through September 30, 2022) in-quota quantity of the tariff-rate quotas (TRQs) for imported raw cane sugar, certain sugars, syrups and molasses (also known as refined sugar), specialty sugar, and sugar-containing products.

DATES: The changes made by this notice are applicable as of September 16, 2021.

FOR FURTHER INFORMATION CONTACT: Erin Nicholson, Office of Agricultural Affairs, at 202–395–9419, or *Erin.H.Nicholson@ustr.eop.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to Chapter 17 of the Harmonized Tariff Schedule of the United States (HTSUS), the United States maintains TRQs for imports of raw cane sugar and refined sugar. Pursuant to Additional U.S. Note 8 to Chapter 17 of the HTSUS, the United States maintains a TRQ for imports of sugar-containing products.

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a TRQ for any agricultural product among supplying countries or customs areas. The President delegated this authority to the U.S. Trade Representative under Presidential Proclamation 6763 (60 FR 1007).

On September 13, 2021, the Administrator of the Foreign Agricultural Service of the U.S. Department of Agriculture (Administrator) announced the sugar program provisions for FY2022. The Administrator announced an in-quota quantity of the TRQ for raw cane sugar for FY2022 of 1,117,195 metric tons raw value (MTRV) (conversion factor: 1 metric ton raw value = 1.10231125 short tons raw value), which is the minimum amount to which the United States is committed under the World Trade Organization (WTO) Agreement. The U.S. Trade Representative is allocating this quantity (1,117,195 MTRV) to the following countries in the amounts specified below:

Country	FY2022 raw cane sugar allocations (MTRV)
Argentina	45,281
Australia	87,402
Barbados	7,371
Belize	11,584
Bolivia	8,424
Brazil	152,691
Colombia	25,273
Congo (Brazzaville)	7,258
Costa Rica	15,796
Cote d'Ivoire	7,258
Dominican Republic	185,335
Ecuador	11,584
El Salvador	27,379
Fiji	9,477
Gabon	7,258
Guatemala	50,546
Guyana	12,636
Haiti	7,258
Honduras	10,530
India	8,424
Jamaica	11,584
Madagascar	7,258
Malawi	10,530
Mauritius	12,636
Mexico	7,258
Mozambique	13,690
Nicaragua	22,114
Panama	30,538
Papua New Guinea	7,258
Paraguay	7,258
Peru	43,175
Philippines	142,160
South Africa	24,220
St. Kitts & Nevis	7,258
Swaziland	16,849
Taiwan	12,636
Thailand	14,743
Trinidad & Tobago	7,371
Uruguay	7,258
Zimbabwe	12,636

These allocations are based on the countries' historical shipments to the United States. The allocations of the in-quota quantities of the raw cane sugar TRQ to countries that are net importers of sugar are conditioned on receipt of the appropriate verifications of origin. Certificates for quota eligibility must accompany imports from any country for which an allocation has been provided.

On September 13, 2021, the Administrator also announced the establishment of the in-quota quantity of the FY2022 refined sugar TRQ at 222,000 MTRV, for which the sucrose content, by weight in the dry state, must have a polarimeter reading of 99.5 degrees or more. This amount includes the minimum level to which the United

States is committed under the WTO Agreement (22,000 MTRV of which 1,656 MTRV is reserved for specialty sugar) and an additional 200,000 MTRV for specialty sugars. The U.S. Trade Representative is allocating the refined sugar TRQ as follows: 10,300 MTRV to Canada, 2,954 MTRV to Mexico, and 7,090 MTRV to be administered on a first-come, first-served basis.

Imports of all specialty sugar will be administered on a first-come, first-served basis in five tranches. The Administrator has announced that the total in-quota quantity of specialty sugar will be the 1,656 MTRV reserved within the WTO minimum plus an additional 200,000 MTRV. The first tranche of 1,656 MTRV will open on October 1, 2021. All types of specialty sugars are eligible for entry under this tranche. The second tranche of 60,000 MTRV will open on October 8, 2021. The third tranche of 60,000 MTRV will open on January 21, 2022. The fourth tranche of 40,000 MTRV will open on April 15, 2022. The fifth tranche of 40,000 MTRV will open on July 15, 2022. The second, third, fourth, and fifth tranches will be reserved for organic sugar and other specialty sugars not currently produced commercially in the United States or reasonably available from domestic sources.

With respect to the in-quota quantity of 64,709 metric tons of the TRQ for imports of certain sugar-containing products maintained under Additional U.S. Note 8 to chapter 17 of the HTSUS, the U.S. Trade Representative is allocating 59,250 metric tons to Canada. The remainder of the in-quota quantity, 5,459 metric tons, is available for other countries on a first-come, first-served basis.

Raw cane sugar, refined and specialty sugar, and sugar-containing products for FY2022 TRQs may enter the United States as of October 1, 2021.

Greta M. Peisch,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2021–19951 Filed 9–15–21; 8:45 am]

BILLING CODE 3290–F1–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No.–2021–0006]

Petition for Exemption; Summary of Petition Received; Airlines for America, Cargo Airline Association, National Air Carrier Association, and Regional Airline Association

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 6, 2021.

ADDRESSES: Send comments identified by docket number FAA–2021–0706 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alphonso Pendergrass, *alphonso.pendergrass@faa.gov* or (202) 267–4713, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Timothy R. Adams,

Acting Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2021–0706.

Petitioner: Airlines for America, Cargo Airline Association, National Air Carrier Association, and Regional Airline Association.

Section(s) of 14 CFR Affected: § 121.803(c)(3), and Appendix A to Part 121, paragraph 2.

Description of Relief Sought: The petitioners request limited relief for their passenger and cargo airline members and similarly situated air carriers to exempt temporarily passenger-carrying airlines from having to include the required quantity of ammonia inhalants in required First Aid Kits (FAKs) during periods of temporary supply shortages beyond operator control.

[FR Doc. 2021–19952 Filed 9–15–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0212]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: KELPIE (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has

been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before October 18, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0212 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2021–0212 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0212, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel KELPIE is:

—*Intended Commercial Use of Vessel:* ''Charters along the coast of Santa Barbara CA and the offshore channel islands.''
—*Geographic Region Including Base of Operations:* ''California'' (Base of Operations: Santa Barbara, CA)
—*Vessel Length and Type:* 75.0′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2021–0212 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2021–0212 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021–20041 Filed 9–15–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0210]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SATORI (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, Transportation (DOT).

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this

action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before October 18, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0210 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2021–0210 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–20211–0210, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel SATORI is:

—*Intended Commercial Use of Vessel:* ''Intended solely on carrying passengers for hire on eco-friendly sailing and snorkeling excursions.''
—*Geographic Region Including Base of Operations:* ''Florida'' (Base of Operations: Key West, FL)
—*Vessel Length and Type:* 46.8′ Sail

The complete application is available for review identified in the DOT docket as MARAD 2021–0210 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2021–0210 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021–20039 Filed 9–15–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0208]

Correction to Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: PHOENIX (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: This notice serves to correct what was previously published in the **Federal Register** on September 13, 2021 (86 FR 50947), relating to the motor vessel PHOENIX. The previous publication incorrectly stated the vessel's length. The comment period is now being extended following the date of this publication. The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry

no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before October 18, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0208 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2021–0208 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0208, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel PHOENIX is:

—*Intended Commercial Use of Vessel:* ''Private vessel charters, passengers only.''

—*Geographic Region Including Base of Operations:* ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, California, Oregon, Washington, and Alaska (excluding waters in Southeastern Alaska and waters north of a line between Gore Point to Cape Suckling, including the North Gulf Coast and Prince William Sound).'' (Base of Operations: Marina Del Rey, CA).

—*Vessel Length and Type:* 78.6′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2021–0208 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2021–0208 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021–20043 Filed 9–15–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2021–0211]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: PAPILLON (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, Transportation (DOT).

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before October 18, 2021.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2021–0211 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2021–0211 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2021–0211, 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.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–459, Washington, DC 20590. Telephone 202–366–5723, Email *James.Mead@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel PAPILLON is:

—*Intended Commercial Use of Vessel:* ''The vessel will be used for passenger charters.''

—*Geographic Region Including Base of Operations:* ''California'' (Base of Operations: Berkeley, CA)

—*Vessel Length and Type:* 70.0′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2021–0211 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2021–0211 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021–20040 Filed 9–15–21; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2021–0075]

Notice of Proposed Agency Information Collection Activities; Modification of Existing Information Collection

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published June 24, 2021, and the comment period ended August 23, 2021. One comment related to the ICR was submitted into the docket. The comment proposed striking the existing requirement that an original Application should be provided in three-hole punch binders as part of the application process. The Build America Bureau has accepted this comment and removed the requirement that an original Application should be provided in three-hole punch binders for each loan application.

DATES: Written comments should be submitted directly to the OMB by October 18, 2021.

ADDRESSES: Written comments should be submitted to the attention of the DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503 or by email at *OIRA_submission@omb.eop.gov* with the associated OMB Control Number 2105–0569.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 2138–0013.

Title: Letter of Interest and Application Forms for the Railroad Rehabilitation and Improvement Financing and Transportation Infrastructure Financing and Innovation Act Credit Programs.

Type of Review: Modification of existing information collection.

Background: The RRIF credit program has its origins in Title V of the Railroad Revitalization and Regulatory Reform Act of 1976, 45 U.S.C. 821 *et seq.,* which authorized the Federal Railroad Administration to provide railroads certain financial assistance. This Title V financing program was replaced by the RRIF program under section 7203 of the Transportation Equity Act for the 21st Century of 1998, Public Law 105–178 (1998) (TEA 21). RRIF was subsequently amended by: The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59 (2005) (SAFETEA–LU); the Rail Safety Improvement Act of 2008, Division A of Public Law 110–432; and the Fixing America's Surface Transportation Act (Pub. L. 114–94) (2015) (FAST Act). All applicants for RRIF credit program assistance are required to submit a completed application. 45 U.S.C. 823(a). The information collection activity request for the RRIF credit program application was most recently approved in 2018 (OMB Control Number 2105–0569). See 83 FR 23525 and 83 FR 35534.

The Transportation Infrastructure Finance and Innovation Act of 1998 was enacted as part of TEA 21. The TIFIA program was subsequently amended by SAFETEA–LU, the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141) (2012) (MAP–21), and the FAST Act. All applicants for TIFIA credit program assistance are required to submit a completed Letter of Interest (LOI) and application. 23 U.S.C. 602(a)(1)(A). The existing information collection activity request for the TIFIA credit program letter of interest and application was most recently approved in 2018 (OMB Control Number 2105–0569). See 83 FR 23525 and 83 FR 35534.

The National Surface Transportation and Innovative Finance Bureau (referenced hereafter as the Build America Bureau or the Bureau), established by the Secretary on July 20, 2016, in accordance with the FAST Act, was created to streamline and improve access to the Department's Federal credit programs, including RRIF and TIFIA. The Bureau was made responsible for administering the application processes for the TIFIA and RRIF credit programs. To streamline and conform these application processes, the Bureau created a single LOI form and a single application form that can be used by applicants of either credit program. Both the LOI form and the application form have been updated to reflect efficiencies in the application process adopted by the Department, provide clarifying information, and make the forms easier for applicants to use. Because some key statutory differences exist between the two programs' application processes and eligibility criteria, the forms have been reorganized to clearly identify where an item of information applies only for one of the programs and need not be answered by applicants of the other program. The Department seeks OMB approval to modify the LOI and application. The forms have also been reviewed to ensure that all information requested is necessary for the Department to properly perform its functions in administering its credit programs and updated to reflect the current statutory requirements.

The LOI asks the applicant to describe, among other things, the project and its location, purpose and cost; the proposed financial plan, the status of environmental review, and certain information regarding satisfaction of other eligibility requirements under the applicable credit program. The application serves as the official request for credit and, therefore, requires the same information required of the LOI, plus detailed information about the applicant's legal and management structure, its financial health, the revenue stream pledged to repay the loan, and other information regarding satisfaction of eligibility requirements. TIFIA and RRIF credit assistance is awarded based on a project's satisfaction of TIFIA and RRIF (as applicable) eligibility requirements. The Department is authorized to prescribe the form and contents of the LOI and application. 45 U.S.C. 823 and 23 U.S.C. 601(a)(6).

Respondents: State and local governments, transit agencies, government-sponsored authorities, special authorities, special districts, ports, private railroads, and certain other private entities.

Estimated Annual Number of Respondents: Based on the number and type of interested stakeholders that have contacted the Department about the RRIF and TIFIA programs in fiscal years (FY) 2018–2021, the Department estimates that it will receive, on an annual basis, eight (8) RRIF LOIs, twelve (12) TIFIA LOIs, eight (8) RRIF applications, and twelve (12) TIFIA applications.

Estimated Total Annual Burden Hours: The Department estimates that it will generally take applicants not fewer than twenty (20) person-hours to assemble a single LOI (for either credit program) and not fewer than one hundred (100) person-hours to assemble a single application (for either credit program). (Person-hour estimates provided for a RRIF application assume that the applicant will initially submit an LOI, reducing the number of person-hours spent on the application.) Based on the anticipated annual total number of respondents, the total annual hour burden of this collection for RRIF LOIs and applications is 960 and for TIFIA LOIs and applications is 1,440 hours.

Frequency of Collection: This information collection will occur on a rolling basis as interested entities seek RRIF or TIFIA credit assistance.

Public Comments Invited: The Department invites interested respondents to comment on a proposed information collection activity (summarized below) with respect to: (i) Whether the information collection activities are necessary for the Department to properly execute its functions, including whether the

activities will have practical utility; (ii) the accuracy of the Department's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for the Department to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for the Department to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). See 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). The Department believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, the Department reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

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 9, 2021.

Morteza Farajian,

Executive Director, the Build America Bureau.

[FR Doc. 2021–19945 Filed 9–15–21; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2021–0106]

America's Supply Chains and the Transportation Industrial Base

ACTION: Notice of request for information.

SUMMARY: On February 24, 2021, President Biden issued an Executive Order, ''America's Supply Chains,'' which directs several Federal agency actions to secure and strengthen America's supply chains. On June 8, 2021, the President also established a Supply Chain Disruptions Task Force—co-chaired by the Secretaries of Transportation, Agriculture, and Commerce—to address near term supply chain challenges, with a focus on alleviating bottlenecks and supply constraints in the transportation sector, particularly for ports, rail, and trucking. The Executive Order requires the Secretary of Transportation to submit, within one year, a report to the President on supply chains for the transportation industrial base. DOT's one-year assessment will build off the work of the Supply Chains Disruption Task Force and focus on the freight and logistics sector, with the goal of strengthening resilience among transportation supply chains. This notice requests information from the public to assist the Department of Transportation in preparing the report required by the Executive Order and solicits practical solutions from a broad range of stakeholders to address current and future challenges to supply chain resilience in the freight and logistics sector.

DATES: Comments must be received on or before October 18, 2021. DOT will consider comments filed after this date to the extent practicable.

ADDRESSES: You may submit comments identified by Docket Number DOT–OST–2021–0106 by any of the following methods:

- *Electronic Submission:* Go to *http://www.regulations.gov.* Search by using the docket number (provided above). Follow the instructions for submitting comments on the electronic docket site.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor (W12–140), Washington, DC 20590–0001.
- *Hand Delivery:* W12–140 of the Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket numbers.

Note: All comments received, including any personal information, will be posted without change to the docket and is accessible via *http://www.regulations.gov.* Input submitted online via *www.regulations.gov* is not immediately posted to the site. It may take several business days before your submission is posted.

FOR FURTHER INFORMATION CONTACT: Ryan Endorf at *ryan.endorf@dot.gov* or at 202–366–4835.

SUPPLEMENTARY INFORMATION:

Background: On February 24, 2021, President Biden issued Executive Order 14017, ''America's Supply Chains'' (86 FR 11849) (E.O. 14017). E.O. 14017 focuses on the need for resilient, diverse, and secure supply chains to ensure U.S. economic prosperity and national security. Such supply chains are needed to address conditions that can reduce critical manufacturing capacity and the availability and integrity of critical goods, products, and services. Section 4 of E.O. 14017 directs that within one year, the Secretary of Transportation shall submit a report to the President, through the Assistant to the President for National Security Affairs (APNSA) and the Assistant to the President for Economic Policy (APEP), on supply chains for the transportation industrial base. Per the Executive Order, the Secretary shall determine what constitutes the ''transportation industrial base'' for purposes of the report. President Biden has also established a Supply Chain Disruptions Task Force—co-chaired by the Secretaries of Transportation, Agriculture, and Commerce—to address near term supply chain challenges, with a focus on alleviating bottlenecks and supply constraints in the transportation sector, particularly for ports, rail, and trucking.

The transportation industry in the U.S. is both vast and varied and underpins much of the economic activity that takes place in other sectors. It includes both the vehicles required to move goods and people and the roads, rails, waterways, and airways over which those vehicles travel. It includes cargo and passenger terminals that provide for the transfer of people and goods between vehicles and modes. It includes the control and information systems that allow the network to operate smoothly and efficiently and enable users to make the most advantageous choices about their use of that network. It includes public and private providers of transportation services and the operation of privately owned personal vehicles.

In fulfilling this requirement, the Department intends to produce a report on the Nation's freight and logistics sector, focused on how the freight system supports supply chains and any challenges and resilience issues within that system. DOT has heard from many stakeholders about issues related to bottlenecks on highways, rail, and at ports, as well as severe container/chassis shortages and lack of adequate warehousing capacity, particularly around the nation's largest ports. The resiliency of the freight system is also a key aspect of supply chain resiliency across the rest of the economy, including the critical products being addressed in the one-year reports being developed by other agencies.

The Department is currently engaged with stakeholders and public agency partners in addressing current issues in freight and logistics through President' Biden's Supply Chain Disruptions Task Force. DOT's E.O. 14017 report will build on those efforts, focusing on challenges and solutions over the medium and longer term while also addressing DOT's goals of safety, economic strength, climate resilience, equity, and transformation.

This notice requests comments and information from the public to assist the Department of Transportation in preparing the report required by E.O. 14017. In developing this report, the Secretary will consult with the heads of appropriate agencies, and will be assisted by the relevant operating administrations of the Department of Transportation.

Written Comments

The Department seeks information from the public on the current challenges faced within the freight and logistics sector, including, but not limited to, the following topics:

1. The identification of major infrastructure or operational bottlenecks and chokepoints across all aspects of the freight and logistics supply chain—including shipping/receiving, intermodal transfer, rail/water/truck transportation, warehousing, etc.—that slow or impede efficient cargo movement within the freight and logistics sector, and the most effective investments and management practice improvements that could be made to alleviate those bottlenecks.

2. Current and potential future shortages and/or distribution limitations of essential cargo-handling equipment, such as chassis and shipping containers, and how these challenges can be or are likely to be addressed by the freight and logistics industry over both the medium and longer term.

3. Warehouse capacity and availability, and any challenges faced in operating and siting/constructing those facilities, as well as challenges faced by third-party logistics service providers and other stakeholders in the logistic system.

4. Major risks to resilience within the freight and logistics sector (including defense, intelligence, cyber, homeland security, health, climate, environmental, natural, market, economic, geopolitical, human-rights, or labor-management risks). What factors help to mitigate, or conversely exacerbate, these risks?

5. The effects of climate change on transportation and logistics infrastructure and its implications for supply chain resiliency.

6. Technology issues, including information systems, cybersecurity risks, and interoperability, that affect the safe, efficient, and reliable movement of goods. Would greater standardization of those technologies help address those challenges?

7. Key opportunities and challenges with respect to the existing and future workforce to ensure a well-functioning freight and logistics supply chain and achieve the President's goal of increasing good-paying jobs with the choice of a union. Are there additional workforce or skill set opportunities and needs currently, or expected in the future?

8. Current barriers (including statutory, regulatory, technological, institutional, labor and workforce, management, existing business models/practices issues) that inhibit supply chain performance. For any barriers identified, please address the actors involved and potential outcomes should those barriers be removed.

9. Critical assets that the sector relies upon and their expected future availability. Would increasing domestic production of these assets be desirable or feasible as a means of ensuring greater supply chain resiliency (chassis, containers, etc.)?

10. Technological practices, including data sharing, that are being implemented at various levels across the supply chain sector. What are the upsides, challenges, and drawbacks of further adoption?

11. Actions that DOT or other agencies in the U.S. Government (USG) could take under existing authorities or in partnership with States, local governments, the private sector, or labor to address current and evolving challenges within the freight and logistics sector.

12. Other policy recommendations or suggested executive, legislative, or regulatory changes to ensure a resilient supply chain that DOT/USG should consider, including means to collaborate more effectively across government agencies and suggestions based on state and international models.

13. Recommended actions by non-Federal entities, including State and local governments, private firms, labor, and other participants in the freight and logistics sector that could be encouraged by DOT/USG.

Dated: September 10, 2021.

Michael Shapiro,

Deputy Assistant Secretary for Economic Policy.

[FR Doc. 2021–19974 Filed 9–15–21; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

[Docket No. TTB–2021–0003]

Proposed Information Collections; Comment Request (No. 83)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB); Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before November 15, 2021.

ADDRESSES: You may send comments on the information collections described in this document using one of the two methods described below—

- *Internet:* To submit comments electronically, use the comment form for this document posted on the ''Regulations.gov'' e-rulemaking website at *https://www.regulations.gov* within Docket No. TTB–2021–0003.
- *Mail:* Send comments to the Paperwork Reduction Act Officer, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

Please submit separate comments for each specific information collection described in this document. You must reference the information collection's title, form or recordkeeping requirement number (if any), and OMB control number in your comment.

You may view copies of this document, the relevant TTB forms, and any comments received at *https://www.regulations.gov* within Docket No. TTB–2021–0003. TTB has posted a link to that docket on its website at *https://www.ttb.gov/rrd/information-collection-notices.* You also may obtain paper copies of this document, the listed forms, and any comments received by contacting TTB's Paperwork Reduction Act Officer at the addresses or telephone number shown below.

FOR FURTHER INFORMATION CONTACT: Michael Hoover, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; 202–453–1039, ext. 135; or *informationcollections@ttb.gov* (please do not submit comments to this email address).

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau (TTB), as part of a continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections described below, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this document will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether an information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden 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 the requested information.

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 has a valid OMB control number.

Information Collections Open for Comment

Currently, we are seeking comments on the following forms, letterhead applications or notices, recordkeeping requirements, questionnaires, or surveys:

OMB Control No. 1513–0007

Title: Brewer's Report of Operations and Quarterly Brewer's Report of Operations.

TTB Form Number: TTB F 5130.9 and 5130.26.

Abstract: The Internal Revenue Code (IRC) at 26 U.S.C. 5415 requires that all brewers furnish reports of operations and transactions as the Secretary of the Treasury (the Secretary) prescribes by regulation. Under that authority, the TTB regulations in 27 CFR part 25 require brewers to file monthly operations reports using TTB F 5130.9, Brewer's Report of Operations, if they anticipate an annual excise tax liability of $50,000 or more for beer in a given calendar year. Taxpayers who anticipate a liability of less than $50,000 for such taxes in a given year and had such liability the previous year may file quarterly operations reports using TTB F 5130.9 or the simplified TTB F 5130.26, Quarterly Brewer's Report of Operations. The information collected from brewers on these reports regarding the amount of beer they produce, receive, return, remove, transfer, destroy, or otherwise gain or dispose of is necessary to ensure the tax provisions of the IRC are appropriately applied.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is increasing the number of annual respondents, responses, and burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 6,000.
- *Average Responses per Respondent:* 5.4.
- *Number of Responses:* 32,400.
- *Average per-Response Burden:* 0.75 hour.
- *Total Burden:* 24,300 hours.

OMB Control No. 1513–0008

Title: Application and Permit to Ship Liquors and Articles of Puerto Rican Manufacture Taxpaid to the United States.

TTB Form Number: TTB F 5170.7.

Abstract: The IRC at 26 U.S.C. 7652 provides that products made in Puerto Rico, shipped to the United States, and withdrawn for consumption or sale are subject to a tax equal to the internal revenue tax imposed on like products made in the United States. In addition, that section provides that the taxes collected on such Puerto Rican products are covered over (transferred) into the Treasury of Puerto Rico. Under the TTB regulations in 27 CFR part 26, applicants use form TTB F 5170.7 to apply for authorization for, and to document, the shipment of tax-paid or tax-determined Puerto Rican spirits to the United States. The collected information documents the specific spirits and articles, the amounts shipped and received, and the amount of tax, and it identifies the consignor in Puerto Rico and consignee in the United States. TTB uses the information to verify the accuracy of prepayments of excise tax and semimonthly payments of deferred excise taxes, and to determine the amount of revenue to be transferred into the Treasury of Puerto Rico. This information is necessary to ensure the tax provisions of the IRC are appropriately applied.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 20.
- *Average Responses per Respondent:* 106.
- *Number of Responses:* 2,120.
- *Average per-Response Burden:* 0.5 hour.
- *Total Burden:* 1,060 hours.

OMB Control No. 1513–0018

Title: Application for Basic Permit under the Federal Alcohol Administration Act.

TTB Form Number: TTB F 5100.24.

Abstract: Section 103 of the Federal Alcohol Administration Act (FAA Act, 27 U.S.C. 203) requires that a person must apply to the Secretary for a ''basic permit'' before beginning business as: (1) An importer into the United States of distilled spirits, wine, or malt beverages, (2) a producer of distilled spirits or wine, or (3) a wholesaler of distilled spirits, wine, or malt beverages. In addition, section 104 of the FAA Act (27 U.S.C. 204(c)) prescribes who is entitled to a basic permit, and it authorizes the Secretary to prescribe the manner and form of, and the information required in, basic permit applications. Under these authorities, the TTB regulations in 27 CFR part 1 require that applicants use TTB F 5100.24 to apply for new FAA Act basic permits. That application enables TTB to determine the location of the proposed business, the extent of its operations, and if the applicant is qualified under the FAA Act to receive a basic permit.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is increasing the number of annual respondents, responses, and burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profits.

Annual Burden

- *Number of Respondents:* 10,500.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 10,500.
- *Average per-Response Burden:* 1.125 hours.
- *Total Burden:* 11,813 hours.

OMB Control No. 1513–0021

Title: Formula and Process for Nonbeverage Products.

TTB Form Number: TTB F 5154.1.

Abstract: The IRC at 26 U.S.C. 5111–5114 authorizes drawback (refund) of excise tax paid on distilled spirits used in the manufacture of medicines, medicinal preparations, food products, flavors, flavoring extracts, or perfume that are unfit for beverage purposes, and it authorizes the Secretary to prescribe regulations to ensure that drawback is not paid for unauthorized purposes. Under those authorities, TTB has issued regulations to require that nonbeverage drawback claimants show that the taxpaid distilled spirits for which a claimant makes a drawback claim were used in the manufacture of a product unfit for beverage use. Respondents base this showing on the product's formula and manufacturing process, which they describe using form TTB F 5154.1 or its electronic equivalent in Formulas Online. The collected information allows TTB to ensure that the tax provisions of the IRC regarding drawback are appropriately applied. This information collection also is beneficial to respondents as TTB's determination regarding the described product allows claimants to know in advance of actual manufacture if the product is or is not fit for beverage purposes and thus eligible or not eligible for drawback.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is increasing the number of annual respondents, responses, and burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 500.
- *Average Responses per Respondent:* 35.
- *Number of Responses:* 17,500.
- *Average per-Response Burden:* 0.5 hour.
- *Total Burden:* 8,750 hours.

OMB Control No. 1513–0040

Title: Application for Operating Permit Under 26 U.S.C. 5171(d).

TTB Form Number: TTB F 5110.25.

Abstract: As required by the IRC at 26 U.S.C. 5171(d), persons who intend to distill, process, or warehouse distilled spirits for non-beverage use, or who intend to manufacture articles using distilled spirits or warehouse bulk spirits for non-industrial use without bottling, are required to apply for and obtain a distilled spirits plant (DSP) operating permit before beginning such operations. Under that IRC authority, the TTB regulations in 27 CFR part 19 require such persons to apply for a DSP operating permit using form TTB F 5110.25. The form identifies the name and business address of the applicant, the DSP's location, and the operations to be conducted at the plant. Applicants also must submit a statement of business organization, information regarding the persons with significant interest in the business, and a list of trade names the applicant will use in connection with the specified operations. The collected information allows TTB to determine if an applicant is qualified under the IRC to receive a DSP operating permit.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 100.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 100.
- *Average per-Response Burden:* 1 hour.
- *Total Burden:* 100 hours.

OMB Control No. 1513–0052

Title: Alcohol Fuel Plant (AFP) Reports and Miscellaneous Letterhead Applications, and Notices, Marks, and Records.

TTB Form Number: TTB F 5110.75.

Abstract: While distilled spirits produced or imported into the United States are normally subject to excise tax under the IRC at 26 U.S.C. 5001, the IRC at 26 U.S.C. 5214(a)(12) allows distilled spirits used for fuel purposes to be withdrawn free of that tax. As such, the IRC at 26 U.S.C. 5181 and 5207 requires a proprietor of a distilled spirits plant (DSP) established as an alcohol fuel plant (AFP) to make applications, maintain records, and render reports as the Secretary prescribes by regulation. Under those IRC authorities, TTB has issued AFP regulations in 27 CFR part 19 that require proprietors to keep certain records, provide certain notices, place certain marks on alcohol fuel containers, and make an annual operations report on form TTB F 5110.75. TTB uses the collected information to ensure that the tax provisions of the IRC are appropriately applied and to help prevent diversion of alcohol fuel to taxable beverage use.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits; Not-for-profit institutions; and Individuals or households.

Estimated Annual Burden

- *Number of Respondents:* 1,900.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 1,900.
- *Average per-Response Burden:* 1 hour.
- *Total Burden:* 1,900.

OMB Control No. 1513–0103

Title: Tobacco Bond—Collateral, Tobacco Bond—Surety, and Tobacco Bond.

TTB Form Numbers: TTB F 5200.25, TTB F 5220.26, and TTB F 5200.29.

Abstract: The IRC at 26 U.S.C. 5711 requires every person, before commencing business as a manufacturer of tobacco products or cigarette papers and tubes, or as an export warehouse proprietor, to file a bond in the amount, form, and manner as prescribed by the Secretary by regulation. Also, the IRC at 26 U.S.C. 7101 requires that such bonds be guaranteed by a surety or by the deposit of collateral in the form of United States Treasury bonds or notes. Under those IRC authorities, TTB has issued tobacco bond regulations in 27 CFR parts 40 and 44. Those regulations require the prescribed persons to file a surety or collateral bond with TTB in an amount equivalent to the potential tax liability of the person, within a minimum and a maximum amount. The TTB regulations also require a strengthening bond when the amount of an existing bond becomes insufficient or a superseding bond when a current bond is no longer valid for reasons

specified by regulation. Respondents may provide a surety bond using TTB F 5000.25, a collateral bond using TTB F 5000.26, or they may use TTB F 5200.29 for either type of bond as an approved alternate procedure.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits, and individuals.

Estimated Annual Burden

- *Number of Respondents:* 215.
- *Average Responses per Respondent:* 1 (one).
- *Number of Responses:* 215.
- *Average per-Response Burden:* 1 hour.
- *Total Burden:* 215 hours.

OMB Control No. 1513–0107

Title: Monthly Report—Importer of Tobacco Products or Processed Tobacco.

TTB Form Number: TTB F 5220.6.

Abstract: Under the IRC at 26 U.S.C. 5722, importers of tobacco products and of processed tobacco are required to make reports containing such information, in such form, at such times, and for such periods as the Secretary shall prescribe by regulation. Under that authority, the TTB regulations in 27 CFR part 41 require importers of tobacco products and importers of processed tobacco to submit a monthly report on TTB F 5220.6 to account for such products on hand, received, and removed. TTB uses the collected information to help prevent diversion of tobacco products and processed tobacco into the illegal market.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 280.
- *Average Responses per Respondent:* 12.
- *Number of Responses:* 3,360.
- *Average per-Response Burden:* 1 hour.
- *Total Burden:* 3,360.

OMB Control No. 1513–0118

Title: Formulas for Fermented Beverage Products, TTB REC 5052/1.

TTB Recordkeeping Number: TTB REC 5052/1.

Abstract: Under the authority of the IRC at 26 U.S.C. 5051, 5052, and 7805, and of the FAA Act at 27 U.S.C. 205(e), the TTB regulations in 27 CFR parts 7 and 25 require beer and malt beverage producers and importers to file a formula when certain non-exempted ingredients, flavors, colors, or processes are used to produce a non-traditional fermented beverage product. This information collection, which respondents submit to TTB as a written notice, is necessary to ensure that the tax provisions of the IRC are appropriately applied, and that the alcohol beverage labeling provisions of the FAA Act are met for imported products that meet that Act's definition of malt beverage.

Current Actions: There are no program changes or adjustments associated with this information collection, and TTB is submitting it for extension purposes only.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profits; Individuals.

Estimated Annual Burden

- *Number of Respondents:* 550.
- *Average Responses per Respondent:* 3.
- *Number of Responses:* 1,650.
- *Average per-Response Burden:* 1 hour.
- *Total Burden:* 1,650.

OMB Control No. 1513–0122

Title: Formula and Process for Domestic and Imported Alcohol Beverages.

TTB Form Number: TTB F 5100.51.

Abstract: Chapter 51 of the IRC (26 U.S.C. chapter 51) governs the production, classification, and taxation of alcohol products, and the Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires alcohol beverage labels to provide consumers with adequate information as to the identity and quality of alcohol beverages. Each statute also authorizes the Secretary to issue regulations related to such activities. As such, the TTB regulations require alcohol beverage producers and importers to obtain formula approval for certain non-standard products to ensure that such products are properly classified for excise tax purposes under the IRC and properly labeled under the FAA Act. Currently, in lieu of the formula forms and letterhead notices specified in the TTB regulations for each alcohol commodity (distilled spirits, wine, and beer/malt beverages), which are approved under separate OMB control numbers, respondents, as an alternate procedure, may submit TTB F 5100.51 or its electronic equivalent in Formulas Online (FONL), as approved under this OMB control number.

Current Actions: There are no program changes associated with this information collection, and TTB is submitting it for extension purposes only. As for adjustments, due to changes in agency estimates, TTB is increasing the number of annual respondents, responses, and burden hours associated with this collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 3,200.
- *Average Responses per Respondent:* 6.
- *Number of Responses:* 19,200.
- *Average per-Response Burden:* 2 hours.
- *Total Burden:* 38,400.

OMB Control No. 1513–NEW

Title: Combined Alcohol Excise Tax Return and Simplified Operations Report—Pilot Test.

TTB Form Numbers: To be determined.

Abstract: Under the IRC at 26 U.S.C. 5061, the Federal excise tax on wine, distilled spirits, and beer is collected on the basis of a return, which taxpayers file on a semi-monthly, quarterly, or annual basis, depending on the amount of their annual tax liability (see 26 U.S.C. 5061(d)(4)). In addition, under the IRC at 26 U.S.C. 5207, 5367, and 5415, distilled spirits, wine, and beer taxpayers, respectively, must furnish reports of operations and transactions as the Secretary prescribes by regulation.

Currently, under those IRC authorities, the TTB regulations in 27 CFR chapter I require alcohol excise taxpayers to report their excise tax liability using form TTB F 5000.24, Excise Tax Return, approved under OMB No. 1513–0083. In addition, alcohol excise taxpayers must file operations reports accounting for their production, removals, losses, and certain other matters that effect their excise tax liability. Distilled spirits plant proprietors file up to four separate operations reports on a monthly basis: TTB F 5110.11, TTB F 5110.28, TTB F 5110.40, TTB F 5110.43, approved under OMB Nos. 1513–0039, 1513–0041, 1513–0047, and 1513–0049, and concerning, respectively, storage, processing, production, and denaturing operations. Wine premises proprietors

file monthly operations reports on TTB F 5120.17, approved under OMB No. 1513–0053. Brewers, depending on their annual tax liability, file operations reports either on a monthly basis using TTB F 5130.9 or on a quarterly basis using TTB F 5130.9 or TTB F 5130.26, both of which are approved under OMB No. 1513–0007.

As part of TTB's efforts to lower respondent burden, the Bureau is developing a combined tax return and simplified operations report and intends to pilot the use of it with alcohol excise taxpayers. Under this pilot, alcohol excise taxpayers will submit a letterhead application to join the pilot program as an alternative method to their filing the current tax return and operations reports under existing regulatory requirements. Once approved, taxpayers participating in the pilot program will file their combined alcohol excise return and simplified operations report under the due dates currently applicable to their excise tax returns.

The collected information will allow TTB to identify the excise taxpayer, the amount of taxes due, and the amount of payments made, as well as the amount of wine, distilled spirits, or beer the taxpayer produced, removed, transferred, and disposed of during the reporting period, which effects the amount of alcohol excise tax due.

Current Actions: This new information collection request consists of two collections—a letterhead application filed by wine, distilled spirits, and beer taxpayers to participate in this pilot program as an alternate method, and a combined excise tax return and simplified operations report form (on paper or its electronic equivalent) filed by the pilot program participants. The estimated number of participating respondents included in this request is intended to cover different phases of the pilot, with increasing numbers of participants in later phases. TTB intends this alternative method to reduce respondent burden by reducing the amount of information TTB collects on its currently separate excise tax returns and operations reports. TTB estimates that this pilot program will significantly reduce the overall burden hours for alcohol excise taxpayers when compared to the current burden for filing separate tax returns and filing the current operations reports.

Type of Review: New collection request.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden

- *Number of Respondents:* 10,000.
- *Average Responses per Respondent:* 5.8.
- *Number of Responses:* 58,000.
- *Average per-Response Burden:* 1.0 hour.
- *Total Burden:* 58,000 hours.

Dated: September 9, 2021.

Amy R. Greenberg,

Director, Regulations and Rulings Division.

[FR Doc. 2021–19957 Filed 9–15–21; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment Form 8508, Request for Waiver From Filing Information Returns Electronically

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 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 IRS is soliciting comments concerning Form 8508, Request for Waiver from Filing Information Returns Electronically.

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 regulations should be directed to LaNita Van Dyke, (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Returns Required on Magnetic Media.

OMB Number: 1545–0957.

Regulation Project Number: Form 8508.

Abstract: Section 6011(e)(2)(A) of the Internal Revenue Code, as amended by Section 7713 of the Revenue Reconciliation Act of 1989, Public Law 101 239 (1989), 103 Stat. 2106, requires certain filers of information returns to report these on magnetic media. Filers who seek relief from this requirement can use Form 8508 to request a waiver for a specific time. After evaluating the request, IRS will notify the taxpayer as to whether the request is approved or denied.

Current Actions: There is no change to the burden previously approved.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms, Federal government, and State, local or tribal governments, and Not-for-Profit Organizations.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 15 min.

Estimated Total Annual Burden Hours: 750.

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: The Internal Revenue Service (IRS) is particularly interested in comments that:

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

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information

collection; they will also become a matter of public record.

Approved: August 26, 2021.

ChaKinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2021–20019 Filed 9–15–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3949–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Information Referral.

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: Requests for additional information or copies of the form should be directed to LaNita Van Dyke, at (202) 317–6009 or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Referral.

OMB Number: 1545–1960.

Form Number: 3949–A.

Abstract: Form 3949–A is used by certain taxpayer/investors to wishing to report alleged tax violations. The form will be designed to capture the essential information needed by IRS for an initial evaluation of the report. Upon return, the Service will conduct the same back-end processing required under present IRM guidelines. Submission of the information to be included on the form is entirely voluntary on the part of the caller and is not a requirement of the Tax Code.

Current Actions: There are no changes being made to Form 3949–A at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households.

Estimated Number of Respondents: 215,000.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 53,750.

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 26, 2021.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2021–20017 Filed 9–15–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2003–33

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Section 9100 Relief for 338 Elections.

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 Rev. Proc. should be directed to LaNita Van Dyke, (202) 317–6009, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Section 9100 Relief for 338 Elections.

OMB Number: 1545–1820.

Rev. Proc. Number: 2003–3.3.

Abstract: Revenue Procedure 2003–33 provides qualifying taxpayers with an extension of time pursuant to § 301.9100–3 of the Procedure and Administration Regulations to file an election described in § 338(a) or § 338(h)(10) of the Internal Revenue Code to treat the purchase of the stock of a corporation as an asset acquisition.

Current Actions: There are no changes being made to the Rev. Proc. at this time.

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: 60.

Estimated Time per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 300.

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 26, 2021.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2021–20018 Filed 9–15–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Rev. Proc. 99–17

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Mark to Market Election for Commodities Dealers and Securities and Commodities Traders.

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 this revenue procedure should be directed to LaNita Van Dyke, (202) 317–6009, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Mark to Market Election for Commodities Dealers and Securities and Commodities Traders.

OMB Number: 1545–1641 Revenue Procedure Number: Rev. Proc. 99–17 (Revenue Procedure 99–17 is modified by Revenue Procedure 99–49).

Abstract: The revenue procedure prescribes the time and manner for dealers in commodities and traders in securities or commodities to elect to use the mark-to-market method of accounting under Sec. 475(e) or (f) of the Internal Revenue Code. The collections of information of this revenue procedure are required by the IRS in order to facilitate monitoring taxpayers changing accounting methods resulting from making the elections under Sec. 475(e) or (f).

Current Actions: There are no changes being made to this Rev. Proc. at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 30 mins.

Estimated Total Annual Burden Hours: 500.

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. Comments will be 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 has 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 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 26, 2021.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2021–20021 Filed 9–15–21; 8:45 am]

BILLING CODE 4830–01–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 (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Bad Debt Reserves of Banks.

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 regulation should be directed to LaNita Van Dyke, (202) 317–6009, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Bad Debt Reserves of Banks.

OMB Number: 1545–1290.

Regulation Project Number: TD 8513.

Abstract: Section 585(c) of the Internal Revenue Code requires large banks to change from reserve method of accounting to the specific charge off method of accounting for bad debts. Section 1.585–8 of the regulation contains reporting requirements in cases in which large banks elect (1) to include in income an amount greater than that prescribed by the Code; (2) to use the elective cut-off method of accounting; or (3) to revoke any elections previously made.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time per Respondent: 15 min.

Estimated Total Annual Burden Hours: 625.

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 26, 2021.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2021–20022 Filed 9–15–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Coronavirus State and Local Fiscal Recovery Funds Program

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on the proposed information collections listed below, in accordance with the Paperwork Reduction Act of 1995.

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

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. Refer to Docket Number TREAS–DO–2021–0015 and the specific Office of Management and Budget (OMB) control numbers 1505–0271.
- *Mail:* Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: For questions related to these programs, please contact Katherine Richards by emailing *SLFRP@treasury.gov,* or calling (844) 529–9527. Additionally, you can view the information collection requests at *www.reginfo.gov*.

SUPPLEMENTARY INFORMATION:

Title: Coronavirus State and Local Fiscal Recovery Funds.

OMB Control Number: 1505–0271.

Type of Review: Extension of a currently approved collection.

Description: Sections 602 and 603 of the Social Security Act (the ''Act''), as added by section 9901 of the American Rescue Plan Act of 2021, Public Law 117–2 (Mar. 11, 2021) authorized the Coronavirus State Fiscal Recovery Fund (''CSFRF'') and Coronavirus Local Fiscal Recovery Fund (''CLFRF'') respectively (referred to as the ''Coronavirus State and Local Fiscal Recovery Funds'' or ''SLFRF''). The Coronavirus State and Local Fiscal Recovery Funds provide $350 billion in total funding for the Department of the Treasury (''Treasury'') to make payments to States (defined to include the District of Columbia), U.S. Territories (defined to include Puerto Rico, U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa), Tribes, Metropolitan cities, Counties, Consolidated Governments, and (through States) Non-entitlement units of local government (collectively the ''eligible entities'') to (1) respond to the COVID–19 public health emergency or its negative economic impacts, including providing assistance to households, small business, nonprofits, and impacted industries, such as tourism, travel, and hospitality; (2) respond to workers performing essential work during the COVID–19 pandemic by providing premium pay to eligible workers of the State, U.S. Territory, Tribal government, Metropolitan city, County, or Non-entitlement units of local government who are performing essential work or by providing grants to eligible employers that have eligible workers; (3) provide of government services, to the extent COVID–19 caused a reduction of revenues collected in the most recent full fiscal year of the State, U.S. Territory, Tribal government, Metropolitan city, County, or Non-entitlement units of local government; or (4) make necessary investments in water, sewer, or broadband infrastructure.

Forms: Award and Payment Forms and associated forms; Annual Recovery Performance Plan and Distribution Templates and reporting requirements.

Affected Public: State, Territorial, Tribal, and certain Local Governments.

Estimated Number of Respondents: 44,000.

Frequency of Response: Once, Monthly, Quarterly.

Estimated Total Number of Annual Responses: 44,000.

Estimated Time per Response: 15 minutes to 1 hour for award and payment forms, 5 hours to 100 hours for performance plan, distribution templates and reporting requirements.

Estimated Total Annual Burden Hours: 220,000.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget 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 technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: September 10, 2021.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2021–19963 Filed 9–15–21; 8:45 am]

BILLING CODE 4810–AK–P

FEDERAL REGISTER

Vol. 86 Thursday,
No. 177 September 16, 2021

Part II

Office of Personnel Management

Department of the Treasury

Internal Revenue Service

Department of Labor

Employee Benefits Security Administration

Department of Health and Human Services

5 CFR Part 890
26 CFR Part 54
29 CFR Part 2590
45 CFR Parts 144, 148, 149, et al.
Requirements Related to Air Ambulance Services, Agent and Broker Disclosures, and Provider Enforcement; Proposed Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AO28

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG–114676–21]

RIN 1545–BQ15

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AC08

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 144, 148, 149, and 150

[CMS–9907–P]

RIN 0938–AU61

Requirements Related to Air Ambulance Services, Agent and Broker Disclosures, and Provider Enforcement

AGENCY: Office of Personnel Management; Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Proposed rules.

SUMMARY: This document sets forth proposed rules implementing certain provisions of Title I (No Surprises Act) and Title II (Transparency) of Division BB of the Consolidated Appropriations Act, 2021 (CAA). These proposed rules would amend and add provisions to existing rules under the Internal Revenue Code (Code), the Employee Retirement Income Security Act (ERISA), the Public Health Service Act (PHS Act), and the Federal Employees Health Benefits (FEHB) Act. These proposed rules would implement certain provisions of the No Surprises Act that would increase transparency by requiring group health plans and health insurance issuers in the group and individual markets, and FEHB carriers, to submit certain information about air ambulance services to the Secretaries of Health and Human Services (HHS), Labor, and the Treasury, and the Director of the Office of Personnel Management, as applicable, and by requiring providers of air ambulance services to submit certain information to the Secretaries of HHS and Transportation. These proposed rules also include HHS-only proposed rules that would increase transparency by requiring a health insurance issuer offering individual health insurance coverage or short-term, limited-duration insurance to disclose to policyholders and to report to HHS any direct or indirect compensation provided by the issuer to an agent or broker associated with enrolling individuals in such coverage. These proposed rules would also provide the process by which HHS would investigate complaints and potential violations of PHS Act provisions and, if warranted, take enforcement action, including the imposition of civil money penalties, against providers and facilities, including providers of air ambulance services. These proposed rules would amend existing regulations to clarify the process to investigate complaints and potential violations of the PHS Act and impose civil money penalties against plans and issuers. These proposed rules would also establish the process by which HHS would impose civil money penalties if a provider of air ambulance services fails to submit some or all required data to HHS.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, by October 18, 2021.

ADDRESSES: In commenting, please refer to file code CMS–9907–P.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *https://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–9907–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9907–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For matters related to air ambulance reporting: Padma Babubhai Shah, Office of Personnel Management, (202) 606–4056; Kari DiCecco, Internal Revenue Service, Department of the Treasury, (202) 317–5500; Matthew Meidell or Pinar Shapiro, Employee Benefits Security Administration, Department of Labor, (202) 693–8335; Christina Whitefield, Centers for Medicare & Medicaid Services, Department of Health and Human Services, (301) 492–4172. For matters related to agent and broker disclosures under Part 148: Adam Wheeler, (410) 786–3942.

For matters related to enforcement under Part 150: Judah Katz, (410) 786–3879 or Lisa Cuozzo, (410) 786–1746.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post comments received before the close of the comment period on the following website as soon as possible after they have been received: *https://www.regulations.gov.* Follow the search instructions on that website to view public comments. The Centers for Medicare & Medicaid Services (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. Legislative and Regulatory Overview

Title I of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) added Title XXVII to the Public Health Service Act (PHS Act) to establish various reforms to the group and individual health insurance markets. The Patient Protection and Affordable Care Act, Public Law 111–148, was enacted on March 23, 2010, and the Health Care and Education Reconciliation Act of 2010, Public Law 111–152, was enacted on March 30, 2010. (These statutes are collectively known as the ''Affordable Care Act'' or ''ACA.'') The ACA reorganized,

amended, and added to the provisions of Part A of Title XXVII of the PHS Act relating to group health plans and health insurance issuers in the group and individual markets. The term ''group health plan'' includes both insured and self-insured group health plans. The ACA added section 9815(a)(1) to the Internal Revenue Code (Code) and section 715(a)(1) to the Employee Retirement Income Security Act (ERISA) to incorporate the provisions of Part A of Title XXVII of the PHS Act into the Code and ERISA, and made them applicable to group health plans and health insurance issuers providing health insurance coverage in connection with group health plans. Sections 2701 through 2728 of the PHS Act are thereby incorporated into the Code and ERISA.

The Consolidated Appropriations Act, 2021 (CAA) was enacted on December 27, 2020 and includes Title I (No Surprises Act) and Title II (Transparency) in Division BB. The CAA added provisions that apply to plans and issuers offering group or individual health insurance coverage in chapter 100 of the Code, in part 7 of ERISA, and in a new Part D of Title XXVII of the PHS Act. The CAA also amended the Federal Employees Health Benefits (FEHB) Act, 5 U.S.C. 8901, *et seq.,* by adding a new subsection (p) to 5 U.S.C. 8902 that requires each contract with an FEHB carrier to require the carrier to comply with requirements described in certain provisions of the Code, ERISA, and the PHS Act in the same manner as those provisions apply to a group health plan or health insurance issuer offering group or individual health insurance coverage. The CAA provisions that apply to providers, facilities, and providers of air ambulance services, such as requirements related to cost sharing, prohibitions on balance billing for certain items and services, and requirements related to disclosures about balance billing protections, were added to Title XXVII of the PHS Act in a new Part E.

Section 106(a) of the No Surprises Act requires providers of air ambulance services to report certain information to the Secretaries of HHS and Transportation. Section 106(b) of the No Surprises Act added parallel provisions at section 9823 of the Code, section 723 of ERISA, and section 2799A–8 of the PHS Act. These provisions include requirements for plans and issuers to report claims and other information regarding air ambulance services and providers of air ambulance services.

The Director of the Office of Personnel Management (OPM) is of the view that the collection of FEHB plan air ambulance claims data is necessary and appropriate for a more complete understanding of air ambulance services provided across the industry. Further, the OPM Director is of the view that this data would inform OPM for purposes of enforcing the protections provided under 5 U.S.C. 8902(p) and for the appropriate administration and oversight of FEHB plans.

Sections 106(a) and (b) of the No Surprises Act impose these air ambulance data reporting requirements for 2 years. Section 106(c) of the No Surprises Act further requires HHS, in consultation with the Secretary of Transportation, to issue a comprehensive public report summarizing the data and providing an assessment of the state and certain aspects and characteristics of the air ambulance market. Section 106(e) of the No Surprises Act provides for the imposition of civil money penalties of not more than $10,000 on providers of air ambulance services for failure to submit required data. Section 106(e)(3) specifies that certain provisions of section 1128A of the Social Security Act (SSA) shall apply to a civil money penalty under section 106(e) of the No Surprises Act in the same manner as such provisions apply to a penalty or proceeding under section 1128A of the SSA. In addition, section 418 of the Federal Aviation Administration (FAA) Reauthorization Act of 2018 [1] directs the Secretary of Transportation, in consultation with HHS, to form an Advisory Committee on Air Ambulance and Patient Billing (Advisory Committee). Section 106(d) of the No Surprises Act directs HHS, in consultation with the Secretary of Transportation, to take into consideration (as applicable and to the extent feasible) any recommendations included in the Advisory Committee's report.

The charter of the Advisory Committee allowed for the formation of subcommittees to perform specific assignments. The Advisory Committee formed three subcommittees, which included a subcommittee on the Prevention of Balance Billing. At its second full Committee meeting in May 2021, the Advisory Committee recommended the collection of eight specific data elements from providers of air ambulance services: (1) Average cost per trip; (2) air ambulance base rates and patient-loaded statute mileage rates; (3) ancillary fees for specialty services, like neonatal, cardiac, and ''other'' (for example, specialized medicines like snakebites in rural areas); (4) reimbursement data aggregated by payor type (Medicare, Medicaid, self-insured, private insurance) and per transport, based on median rate and zip code, as well as further identifying data regarding private insurance by provider type (hospital-sponsored program, municipality-sponsored program, hospital independent partnership (hybrid) program, or independent program); (5) alternate revenue sources (for example, subsidies or membership programs) broken down per transport for reporting purposes; (6) volume of transports, segregated by aircraft type (fixed wing and rotary wing) and takeoff zip code for government purposes, or for public use when aggregated with other data; (7) market share for air transport, obtained from the FAA certificate holder and identifying the certificate holder's parent company; and (8) market share for health care, by looking at the program type for the FAA certificate holder.[2] Section 9823 of the Code, section 723 of ERISA, and section 2799A–8 of the PHS Act require information to be reported jointly to HHS, the Department of Labor (DOL), and the Department of the Treasury (collectively, the Departments).

Section 106(d) of the No Surprises Act requires HHS, in consultation with the Secretary of Transportation, to undertake notice and comment rulemaking to specify the form and manner in which plans and issuers must submit this information.

The CAA amended the FEHB Act to require that protections from air ambulance surprise billing must be offered by carriers in the same manner as those protections apply under section 9817 of the Code, section 717 of ERISA, and section 2799B–2 of the PHS Act and to require that protections from surprise billing by providers of air ambulance services with respect to FEHB enrollees apply in the same manner as those protections apply under section 2799B–5 of the PHS Act.

The CAA also amended Title XXVII of the PHS Act to add section 2746, which requires a health insurance issuer offering individual health insurance coverage or short-term, limited-duration insurance to disclose to enrollees in such coverage and to report annually to HHS the direct or indirect compensation provided by the issuer to an agent or broker associated with enrolling

[1] Public Law 115–254.

[2] ''Meeting Summary, Second Meeting of the AAPB Advisory Committee,'' U.S. Department of Transportation, Air Ambulance and Patient Billing Advisory Committee, May 27–28, 2021, Washington, DC pp. 15–17. Available at: *https://www.transportation.gov/sites/dot.gov/files/2021-07/AAPB%20Second%20Meeting%20Minutes.pdf.*

individuals in such coverage. Section 2746(d) directs HHS to finalize, through notice and comment rulemaking, the timing, form, and manner in which issuers must make these disclosures to consumers and submit reports to HHS. These new statutory requirements are applicable beginning December 27, 2021.

Section 2723(b) of the PHS Act, as amended by the CAA, authorizes HHS to impose civil money penalties as a means of enforcing the individual and group market requirements contained in Part A and Part D of Title XXVII of the PHS Act with respect to health insurance issuers when a state fails to substantially enforce these provisions, as well as with respect to group health plans that are non-Federal governmental plans.[3] Section 2799B–4 of the PHS Act, as added by section 104 of the No Surprises Act, establishes a similar framework for HHS's enforcement authority over providers and facilities, including providers of air ambulance services, in states that fail to substantially enforce the requirements of Part E of Title XXVII of the PHS Act, as added by the CAA. This provision also authorizes HHS to impose civil money penalties of up to $10,000 per violation on providers and facilities, including providers of air ambulance services, that fail to comply with the applicable PHS Act requirements in such states. It further provides that certain provisions of section 1128A of the SSA shall apply to a civil money penalty or assessment under section 2799B–4 of the PHS Act in the same manner as such provisions apply to a penalty, assessment, or proceeding under subsection (a) of section 1128A of the SSA.

The Departments are issuing regulations in several phases implementing provisions of Title I (No Surprises Act) and Title II (Transparency) of Division BB of the CAA. Later this year, the Departments intend to issue regulations regarding the Federal independent dispute resolution (IDR) process (sections 103 and 105 of the No Surprises Act) and patient protections through transparency and the patient-provider dispute resolution process (section 112 of the No Surprises Act).

On July 13, 2021, the Departments and OPM issued interim final rules entitled *Requirements Related to Surprise Billing; Part I,*[4] which generally apply to group health plans and health insurance issuers offering group or individual health insurance coverage (including grandfathered health plans) with respect to plan years (in the individual market, policy years) beginning on or after January 1, 2022; FEHB health benefits plans with respect to contract years beginning on or after January 1, 2022; and health care providers and facilities, and providers of air ambulance services beginning on January 1, 2022 (July 2021 interim final rules). The July 2021 interim final rules implement sections 9816(a)–(b) and 9817(a) of the Code; sections 716(a)–(b) and 717(a) of ERISA; sections 2799A–1(a)–(b), 2799A–2(a), 2799B–1, 2799B–2, 2799B–3, and 2799B–5 of the PHS Act; and 5 U.S.C. 8902(p), to protect consumers from surprise medical bills for emergency services, air ambulance services furnished by nonparticipating providers of air ambulance services, and non-emergency services furnished by nonparticipating providers at participating facilities in certain circumstances.

Among other requirements, the July 2021 interim final rules require emergency services to be covered without any prior authorization, without regard to whether the health care provider or facility furnishing the emergency services is a participating provider or a participating emergency facility with respect to the services, and without regard to any other term or condition of the plan or coverage other than the exclusion or coordination of benefits or a permitted affiliation or waiting period. With respect to emergency services furnished by nonparticipating providers or facilities, air ambulance services furnished by nonparticipating providers of air ambulance services, and non-emergency services furnished by nonparticipating providers at certain participating facilities, the July 2021 interim final rules generally limit cost sharing for out-of-network services to in-network levels, require such cost sharing to count toward any in-network deductibles and out-of-pocket maximums, and prohibit balance billing in certain circumstances. Balance billing refers to the practice of out-of-network providers billing patients for the difference between: (1) The provider's billed charges; and (2) the amount collected from the plan or issuer plus the amount collected from the patient in the form of cost sharing (such as a copayment, coinsurance, or amounts paid toward a deductible).

Division BB of the CAA also includes: Provisions regarding transparency in plan and insurance identification cards (section 107); continuity of care (section 113); accuracy of provider network directories (section 116); prohibition on gag clauses (section 201) that are applicable for plan years beginning on or after January 1, 2022; and pharmacy benefit and drug cost reporting (section 204) that is required by December 27, 2021. The Departments intend to undertake rulemaking to fully implement these provisions, but rules regarding some of these provisions might not be issued until after January 1, 2022. The Departments note that any such rulemaking to fully implement these provisions would include a prospective applicability date that provides plans, issuers, providers, and facilities, as applicable, a reasonable amount of time to comply with new or clarified requirements. Until rulemaking to fully implement these provisions is finalized and effective, plans and issuers are expected to implement the requirements using a good faith, reasonable interpretation of the statute.

B. Stakeholder Consultation and Input

The Departments consulted with stakeholders on policies related to Division BB of the CAA, including air ambulance data collection, disclosure and reporting of agent and broker compensation, and enforcement of the PHS Act. The Departments held several listening sessions with consumers, health care providers, facilities, providers of air ambulance services, employers, agents, brokers, health plans and health insurance issuers, advocacy groups, and the actuarial community to gather public input. The Departments also solicited input from state representatives on numerous relevant topics and consulted with stakeholders through regular meetings with the National Association of Insurance Commissioners (NAIC), and regular contact with state regulators, issuers, trade groups, consumer advocates, employers, and other interested parties. The Departments considered all public input received as the Departments developed the policies in these proposed rules and welcome additional public comment as part of these proposed rules.

C. Structure of Proposed Rules

The regulations outlined in these proposed rules would be codified in 5 CFR part 890; 26 CFR part 54; 29 CFR part 2590; and 45 CFR parts 144, 148, 149, and 150.

[3] *Also see* section 2761 of the PHS Act, which establishes a parallel framework for enforcement of the individual market requirements contained in Part B of Title XXVII of the PHS Act.

[4] Requirements Related to Surprise Billing; Part I, 86 FR 36872, (July 13, 2021). Public comments on this rule are due by September 7, 2021.

The proposed changes to 45 CFR part 144 would make technical and conforming amendments regarding the purpose of part 150.

The proposed changes to 45 CFR part 148 would set forth requirements for health insurance issuers offering individual health insurance coverage or short-term, limited-duration insurance to disclose to policyholders information regarding direct and indirect compensation provided by the issuer to an agent or broker associated with enrolling individuals in such coverage. The proposed amendments to 45 CFR part 148 also set forth proposed requirements related to the annual reports that health insurance issuers offering individual health insurance coverage or short-term, limited-duration insurance would be required to submit to HHS regarding the direct and indirect compensation paid to agents and brokers. In addition, these proposed rules would make technical and conforming amendments regarding the basis, purpose, and scope of 45 CFR part 148.

The proposed changes to 45 CFR part 149 would require plans, issuers, and providers of air ambulance services to submit to HHS certain data regarding air ambulance services. Proposed rules under 26 CFR 54.9823–1 and 29 CFR 2590.723 would provide that group health plans and health insurance issuers offering group health insurance coverage that satisfy the requirements under 45 CFR part 149 that implement section 2799A–8 of the PHS Act would be treated as satisfying the parallel requirements under section 9823 of the Code and section 723 of ERISA. The proposed change to 5 CFR part 890 would require FEHB carriers to comply with the requirements of 45 CFR 149.230 with respect to an FEHB plan in the same manner as such provisions apply to a group health plan or health insurance issuer offering group or individual health insurance coverage. OPM would coordinate with HHS to receive FEHB air ambulance services data.

The proposed changes to 45 CFR part 150 would make procedural changes to the process HHS utilizes to investigate possible violations of the PHS Act, including proposed amendments to clarify the process to investigate complaints and potential violations of the PHS Act and to impose civil money penalties against non-Federal governmental plans and issuers of group or individual health insurance coverage. The proposed changes would also set forth the process for imposing civil money penalties on providers and facilities, including providers of air ambulance services, for failure to comply with 45 CFR part 149 and failure to provide data required in section 106(a) of the No Surprises Act.

II. Provisions of the Proposed Rules on Reporting Requirements Regarding Air Ambulance Services—Departments of HHS, Labor, and the Treasury

A. In General

These proposed rules propose requirements related to data collection from providers of air ambulance services, as required by section 106(a) of the No Surprises Act, and from plans and issuers offering group or individual health insurance coverage, as required by section 9823 of the Code, section 723 of ERISA, and section 2799A–8 of the PHS Act, as added by section 106(b) of the No Surprises Act.

These proposed rules also include an HHS-only proposed rule that sets forth civil money penalties specified in section 106(e) of the No Surprises Act that would apply to providers of air ambulance services for failure to submit data as required under section 106(a) of the No Surprises Act.[5]

Air ambulance services frequently result in surprise medical bills due to individuals' inabilities to select an in-network provider of air ambulance services when faced with an urgent medical situation. Because of low network participation rates by providers of air ambulance services, individuals are also unable to avoid potential higher cost sharing and balance billing by out-of-network providers. A 2019 study by the Government Accountability Office (GAO) analyzed data from 2017 and found that 69 percent of air ambulance transports of privately-insured patients were out-of-network.[6]

When individuals are unable to avoid providers or providers of air ambulance services that are not in their plan's network, it raises health care costs and exposes individuals to financial risk.[7] The ability to balance bill is often used as leverage by providers to obtain higher in-network payments, which results in higher premiums, higher cost sharing for consumers, and overall increased health care expenditures.[8] Studies have shown that surprise medical bills can be substantial, including with respect to air ambulance services. The GAO found that for privately-insured patients, the median price charged by providers of air ambulance services was about $36,400 for a rotary-wing transport and $40,600 for a fixed-wing transport in 2017.[9] In an earlier study,[10] the GAO noted that there is no national data on balance billing and the extent to which providers of air ambulance services have contracts with health insurance companies. Some states have attempted to collect data on balance billing. The GAO study stated that a Michigan state review of 19 cases of balance billing for air ambulance services between 2013 and 2016 showed an average balance bill of $31,000. Data on cases investigated and closed by the Maryland Insurance Administration between January 2014 and April 2018 showed that the amount of balance bills for air ambulance services ranged from $12,300 to $52,000.

Although some states have enacted laws to regulate the billing practices of providers of air ambulance services, many of these efforts have been unsuccessful due to a preemption provision in the Airline Deregulation Act of 1978 (ADA). The ADA states, in relevant part, ''. . . a State, political subdivision of a State, or political authority of at least two States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation under this subpart.'' [11] Assuming that a provider of air ambulance services is an ''air carrier'' covered by this provision, as is typical,[12] the provision preempts state

[5] Section 106(b) of the No Surprises Act amends part D of Title XXVII of the PHS Act by adding new section 2799A–8. As such, the enforcement provisions under PHS Act section 2723 and 45 CFR part 150 extend to PHS Act section 2799A–8 air ambulance data reporting requirements on issuers and non-Federal governmental group health plans. Section 106(a) of the No Surprises Act is codified in the United States Code as a note to PHS Act section 2799A–8.

[6] *Air Ambulance: Available Data Show Privately-Insured Patients Are at Financial Risk.* GAO–19–292 (March 2019).

[7] Cooper Z et al., Out-of-Network Billing and Negotiated Payments for Hospital-Based Physicians, Health Affairs 39, No. 1, 2020. doi: 10.1377/hlthaff.2019.00507.

[8] *See,* Cooper, Z. et al, Surprise! Out-Of-Network Billing For Emergency Care in the United States, NBER Working Paper 23623, 20173623; Duffy, E. et al., ''Policies to Address Surprise Billing Can Affect Health Insurance Premiums.'' The American Journal of Managed Care 26.9 (2020): 401–404; and Brown E.C.F., et al., The Unfinished Business of Air Ambulance Bills, Health Affairs Blog (March 26, 2021), DOI: 10.1377/hblog20210323.911379, available at *https://www.healthaffairs.org/do/10.1377/hblog20210323.911379/full/.*

[9] *Air Ambulance: Available Data Show Privately-Insured Patients Are at Financial Risk.* GAO–19–292 (March, 2019).

[10] *Air Ambulance: Data Collection and Transparency Needed to Enhance DOT Oversight.* GAO–17–637 (July 27, 2017).

[11] 49 U.S.C. 41713(b).

[12] A provider of air ambulance services is a covered ''air carrier'' if it has economic authority from the Department of Transportation to provide interstate air transportation. Most providers of air ambulance services have such authority under the

Continued

laws that would limit the amount of payment that the provider of air ambulance services would otherwise be entitled to receive.[13] Even within states that have enacted protections against surprise billing, state insurance regulations typically apply only to health insurance coverage, as ERISA generally preempts state laws that would otherwise regulate self-insured group health plans sponsored by private employers.[14] Finally, states are limited in their ability to address surprise bills that involve an out-of-state provider, including an out-of-state provider of air ambulance services.

As states, the Federal Government, oversight agencies, and advocacy groups have examined the issue of air ambulance services and balance billing, it has become clear that there is a lack of comprehensive, national data on air ambulance costs, transports, and contractual arrangements between providers of air ambulance services and plans and issuers. In its 2017 report, the GAO recommended that the Federal Government assess available data to determine what additional information would be needed to address future concerns regarding unfair or deceptive practices.[15] In addition, section 418 of the FAA Reauthorization Act of 2018 directed the Secretary of Transportation, in consultation with HHS, to form an Advisory Committee on Air Ambulance and Patient Billing (Advisory Committee). In January 2021, the Advisory Committee's subcommittee on the Prevention of Balance Billing recommended to the full Advisory Committee the collection of data to ''(a) improve understanding of the air ambulance industry by policymakers, (b) increase transparency of market conditions impacting air ambulance services, and (c) indirectly improve contract negotiation between payors and air ambulance providers and suppliers.'' [16]

Section 106 of the No Surprises Act takes important steps to increase transparency regarding air ambulance services. Specifically, section 106(a) of the No Surprises Act requires providers of air ambulance services to submit certain data to the Secretaries of HHS and Transportation. Section 106(b) of the No Surprises Act requires plans and issuers to submit certain data on air ambulance services to the Secretaries of HHS, DOL, and the Treasury, through section 9823 of the Code, section 723 of ERISA and section 2799A–8 of the PHS Act. Section 106(d) of the No Surprises Act requires HHS, in consultation with the Secretary of Transportation, to specify through notice and comment rulemaking, the form and manner in which the reports described under section 106(a) of the No Surprises Act (regarding reporting by providers of air ambulance services) and section 9823 of the Code, section 723 of ERISA, and section 2799A–8 of the PHS Act (regarding reporting by plans and issuers) must be submitted to such Secretaries. Therefore, in these proposed rules, HHS proposes amendments to 45 CFR part 149 that specify the form and manner of these reports. In addition, the Department of the Treasury and DOL propose to add 26 CFR 54.9823–1 and 29 CFR 2590.723 to specify that group health plans and health insurance issuers offering group health insurance coverage would satisfy the requirements under section 9823 of the Code and section 723 of ERISA, respectively, by submitting a report to HHS that satisfies the requirements of 45 CFR 149.230. In the interest of burden reduction and efficiency, the Departments propose that the required information reporting by group health plans and health insurance issuers offering group and individual health insurance coverage, together with the required information reporting by FEHB carriers,[17] would be satisfied through reporting to HHS.

B. Basis and Scope (45 CFR 149.10)

HHS proposes to amend 45 CFR 149.10(a) to add a reference to section 106(a) of the No Surprises Act, which requires data reporting by providers of air ambulance services, to the basis of part 149.

C. Applicability (45 CFR 149.20)

HHS proposes to amend 45 CFR 149.20 to include a reference to the new subpart C, which under these proposed rules would include data submission requirements for plans and issuers. See section II.F. of the preamble for discussion of the applicability of the proposed rules regarding data submission requirements for providers of air ambulance services.

D. Definitions (45 CFR 149.30)

HHS proposes to amend 45 CFR 149.30 by adding definitions relevant to data submission requirements for providers of air ambulance services and plans and issuers. The Departments propose to define an air ambulance base as a site from which a provider of air ambulance services operates to provide air ambulance services. The Departments propose to define a National Provider Identifier (NPI) by referencing the definition in 45 CFR 162.406. The Departments seek comment on these proposed definitions.

E. Reporting Requirements for Plans and Issuers Regarding Air Ambulance Services (45 CFR 149.230)

HHS proposes to amend part 149 by adding 45 CFR 149.230 to subpart C to describe the data reporting requirements for plans and issuers. Proposed 45 CFR 149.230(a) includes general requirements, the timing and form of the data submission, and the reporting requirements in circumstances when a transfer of business occurs.

As discussed in sections I.A and II.A of the preamble, section 106(b) of the No Surprises Act added parallel provisions at section 9823 of the Code, section 723 of ERISA, and section 2799A–8 of the PHS Act requiring plans and issuers to submit information regarding air ambulance services jointly to the Departments. Section 106(d) of the No Surprises Act directs HHS, in consultation with the Secretary of Transportation, to undertake notice and comment rulemaking to specify the form and manner in which plans and issuers must submit this information. Therefore, in these proposed rules, HHS proposes amendments to 45 CFR part 149 that specify the form and manner for the reports required in section 9823 of the Code, section 723 of ERISA, and section 2799A–8 of the PHS Act, as enacted in section 106(b) of the No Surprises Act. In the interest of burden reduction and efficiency, the Department of the Treasury and DOL

provisions of 14 CFR part 298. *See, for example, Scarlett* v. *Air Methods Corp.,* 922 F.3d 1053 (10th Cir. 2019); *Air Evac EMS* v. *Cheatham,* 910 F.3d 751 (4th Cir. 2018).

[13] *See, for example, Guardian Flight LLC* v. *Godfread,* 991 F.3d 916, 921 (8th Cir. 2021) (holding that ADA preempted state law prohibiting out-of-network providers of air ambulance services from balance billing and requiring them to accept amounts paid by insurers); *Bailey* v. *Rocky Mountain Holdings, LLC,* 889 F.3d 1259, 1269–72 (11th Cir. 2018) (holding that ADA preempted state law that prohibited providers of air ambulance services from collecting more than amount specified in fee schedule).

[14] In addition, FEHB contract terms preempt state law in accordance with 5 U.S.C. 8902(m)(1).

[15] *See Air Ambulance: Data Collection and Transparency Needed to Enhance DOT Oversight.* GAO–17–637 (July 27, 2017).

[16] Air Ambulance and Patient Billing Advisory Committee's Subcommittee on Prevention of Balance Billing, ''A Report on the Prevention of Balance Billing'', January 2021, DOT–OST–2018–0206–0026_attachment_1. At its second full committee meeting in May 2021, the Advisory Committee recommended the collection of eight specific data elements from providers of air ambulance services. *See* section I.A of the preamble. The Committee's final report containing this recommendation had yet to be produced at the time this rulemaking was published.

[17] OPM proposes to authorize and require FEHB carriers to submit air ambulance data to HHS. OPM will coordinate with HHS to receive FEHB air ambulance services data.

propose to add 26 CFR 54.9823–1 and 29 CFR 2590.723, respectively, to provide that plans and issuers would satisfy the requirements to submit information pursuant to section 9823 of the Code and section 723 of ERISA by satisfying the information reporting requirements under proposed 45 CFR 149.230. Similarly, as discussed further in section IV of the preamble, OPM proposes to add conforming reporting requirements to require FEHB carriers to comply with the requirements of proposed 45 CFR 149.230 with respect to an FEHB plan in the same manner as such provisions apply to a group health plan or health insurance issuer offering group or individual health insurance coverage.

The Departments interpret section 9823 of the Code, section 723 of ERISA, and section 2799A–8 of the PHS Act to require plans and issuers to submit data regarding air ambulance services on a calendar year basis. The Departments are of the view that a calendar year reporting period would maximize the uniformity of the data across all submitters and provide a suitable basis for performing the trend analyses that section 106(c) of the No Surprises Act requires HHS to conduct as part of developing a comprehensive public report. In order to ensure completeness of the data, the Departments propose that data with respect to a calendar year would include both data relevant to air ambulance services furnished within the calendar year, as well as data relevant to services for which payments were made within the calendar year (even if the service was provided in a different calendar year). The Departments are of the view that this approach is necessary due to the limited duration of the data collection and statutory deadlines that may not allow sufficient time for claims run-out, particularly with respect to providers of air ambulance services that do not have contractual relationships with plans and issuers.

Based on the expectation that this rulemaking would be finalized during 2021, as required in section 106(d) of the No Surprises Act, and consistent with the statutory requirement on plans and issuers to report the required data not later than 90 days after the last day of the applicable calendar year, the Departments propose that plans and issuers would be required to submit the data for calendar year 2022 by March 31, 2023, and the data for calendar year 2023 by March 30, 2024. In order to ensure the completeness of the data, in proposed 45 CFR 149.230(a)(3), the Departments further propose that an issuer that acquires from another issuer a line or block of business that provided coverage of air ambulance services during calendar years 2022 or 2023 would be required to report the air ambulance services data on behalf of the acquired business for the entire applicable calendar year. The Departments propose that these reporting requirements would apply to the selling and acquiring issuers if a sale or transfer occurs as a result of issuers being merged, combined, spun off, affected by, or engaging in any similar transaction during a calendar year. In addition, to ensure completeness and timeliness of reporting of all relevant air ambulance services data, the proposed rule would provide that the Secretary of HHS may provide examples of these transactions in guidance.

In addition, the Departments and OPM are publishing a proposed information collection, which would provide additional technical details regarding the required data elements, for public comment at the same time as or shortly after publishing these proposed rules. The proposed information collection would include a proposed data template and instructions. The proposed information collection would specify that plans and issuers do not need to submit information required in proposed 45 CFR 149.230 if they did not receive claims or make or expect to make payments for air ambulance services with respect to the reporting period.

Section 9823 of the Code, section 723 of ERISA, and section 2799A–8 of the PHS Act require plans and issuers offering group or individual health insurance coverage to submit claims data for air ambulance services that include the following information about the claims: Whether the services were provided on an emergent or non-emergent basis; whether the provider of such services is part of a hospital-owned or sponsored program, municipality-sponsored program, hospital independent partnership (hybrid) program, independent program, or tribally operated program in Alaska; whether the transport originated in a rural or urban area; the type of aircraft used for the transport (fixed-wing or rotary-wing air ambulance); and whether the provider of the air ambulance service has a contract with the plan or issuer to provide air ambulance services.

Those statutory sections further require plans and issuers to provide, in addition to the information described in the preceding paragraph of the preamble, such other information regarding providers of air ambulance services as the Departments may specify. Section 106(c) of the No Surprises Act requires HHS, in consultation with the Secretary of Transportation, to produce a comprehensive public report that must include several different analyses that require collection of other data not specifically identified in section 9823 of the Code, section 723 of ERISA, and section 2799A–8 of the PHS Act. These analyses include: An assessment of the average charges for air ambulance services; amounts paid by plans and issuers to providers of air ambulance services; amounts paid out-of-pocket by consumers; the frequency of patient balance billing; the frequency of claims appeals made by providers of air ambulance services to plans and issuers; and any other data relating to air ambulance services determined necessary and appropriate by Secretaries of HHS and Transportation. To perform these analyses, the Secretaries of HHS and Transportation would need to be able to match the information collected from plans and issuers to the information collected from providers of air ambulance services under section 106(a) of the No Surprises Act.

Therefore, in proposed 45 CFR 149.230(b), HHS proposes to require submission of claims-level data on air ambulance services in order to collect the information necessary to satisfy these statutory requirements related to the HHS public report. Moreover, the Departments are of the view that submission of claims-level data would be less burdensome than submission of multiple sets of total claims data aggregated by the various categories described in section 9823 of the Code, section 723 of ERISA, and section 2799A–8 of the PHS Act, particularly given the relatively small volume of claims for air ambulance services. It is the Departments' understanding that information regarding the service delivery model of the provider of air ambulance services (such as affiliation with a hospital or municipality or other similar program) may not be available to plans and issuers. Therefore, the Departments propose to require plans and issuers to report that data element only to the extent it is available to them.

The Departments appreciate the need to ensure both stakeholder and consumer privacy, particularly when collecting claims-level data, and therefore would take precautions to protect the confidentiality of claims-level data. HHS proposes to collect only that claims-level data that would be sufficient for producing the comprehensive report required by the statute. Moreover, HHS intends to

collect and maintain the information using information technology (IT) systems that are designed to meet all of the security standards protocols established under Federal law or by HHS relevant to such information.[18]

The claims-level data elements that HHS proposes to require plans and issuers to submit to support HHS's publication of the comprehensive public report, but that are not explicitly listed in section 9823 of the Code, section 723 of ERISA, and section 2799A–8 of the PHS Act, include: The date of service; billing NPI and Current Procedural Terminology (CPT)/Healthcare Common Procedure Coding System (HCPCS) codes information; and certain information about each air ambulance transport (such as the loaded miles and whether the transport was an inter-facility transport). These data elements, specifically the NPI and the date of service, would enable the Secretaries of HHS and Transportation to combine and validate the information collected from plans and issuers and the information collected from providers of air ambulance services.

Similarly, to enable the Secretaries of HHS and Transportation to analyze and summarize the data in an appropriate and meaningful manner in a comprehensive public report, HHS also proposes that the claims-level data elements include the market type of the plan or coverage associated with the air ambulance services. For fully-insured coverage, this would include the individual, small group, and large group markets, as defined in section 2791(e) of the PHS Act. For self-insured group health plans, this would include identification of the plan sponsor as a small employer or large employer, as defined in section 2791(e) of the PHS Act, with reasonable estimates allowed when the exact information on the size of the employer is not available. Under this proposal, FEHB plans would also be separately identified.

Further, to satisfy the requirements for the comprehensive public report described in section 106(c) of the No Surprises Act, including the required assessments of the frequency of patient balance billing and claims appeals made by air ambulance providers, HHS proposes that the claims-level data elements include certain claim adjudication information (including whether the claim was paid, partially paid, denied, or appealed, and the reason for the denial and the outcome of the appeal, if applicable), as well as certain claim payment information (including submitted charges, amounts paid by the payor, and cost-sharing amount).

In order to streamline the provision of the required disclosures and to avoid unnecessary duplication of reporting with respect to group health insurance coverage, the Departments propose that, to the extent coverage under a plan consists of group health insurance coverage, the plan satisfies the reporting requirements if the plan requires the issuer offering the coverage to provide the information pursuant to a written agreement between the plan and the issuer. For example, if a plan and an issuer enter into a written agreement under which the issuer agrees to report the information required under proposed 45 CFR 149.230, and the issuer fails to submit a complete or timely report, then the issuer, but not the plan, would have violated these reporting requirements. However, if a plan has knowledge that the required report has not been submitted, the Departments would encourage the plan to work with the issuer to correct the noncompliance as soon as practicable or notify the applicable agency enforcing this requirement.

The Departments also highlight that nothing prevents a self-insured group health plan from contracting with another party, such as a third-party administrator (TPA), to report the required information, including, to the extent permitted under other Federal or state laws, entering into a written agreement for the other party to indemnify the plan in the event the other party fails to submit a complete or timely report. However, the plan would be required to monitor the other party to ensure that the entity is submitting the required information as it is ultimately the responsibility of the self-insured group health plan to report the information required under proposed 45 CFR 149.230. The proposed information collection instrument is designed in a manner that would enable a TPA that submits information on behalf of multiple self-insured group health plans to submit a single submission that includes the required data elements for all such plans.

Excepted benefits are exempt from requirements in chapter 100 of the Code, part 7 of ERISA, and Part A and Part D of Title XXVII of the PHS Act.[19] [20] Short-term, limited-duration insurance is excluded from the definition of individual health insurance coverage and is exempt from the new requirements established in section 2799A–8 of the PHS Act. Therefore, short-term, limited-duration insurance (as defined in 26 CFR 54.9801–2, 29 CFR 2590.701–2, and 45 CFR 144.103) and coverage that consists solely of excepted benefits (as described in section 9832 of the Code, section 733 of ERISA, and section 2791 of the PHS Act) would not be subject to the reporting requirements set forth in 45 CFR 149.230 in these proposed rules. Individual coverage health reimbursement arrangements and other account-based plans, as described in 26 CFR 54.9815–2711(d)(6)(i), 29 CFR 2590.715–2711(d)(6)(i), and 45 CFR 147.126(d)(6)(i), make reimbursements subject to a maximum fixed dollar amount for a period, such that the benefit design of these coverage options makes concepts related to the reporting of data related to air ambulance services inapplicable. Therefore, under these proposed rules, the reporting requirements also would not apply to individual coverage health reimbursement arrangements and other account-based plans, consistent with the existing applicability provisions in 45 CFR 149.20 with respect to other No Surprises Act requirements in 45 CFR part 149.

Section 9823 of the Code, section 723 of ERISA, and section 2799A–8 of the PHS Act (and other provisions of the No Surprises Act that are applicable to group health plans and health insurance issuers offering group or individual health insurance coverage) apply to grandfathered health plans. Section 1251 of the Affordable Care Act provides that grandfathered health plans are not subject to certain provisions of the Code, ERISA, and the PHS Act, as added by the Affordable Care Act, for as long as they maintain their status as grandfathered health plans. For example, grandfathered health plans are subject neither to the requirement to cover certain preventive services without cost sharing under section 2713 of the PHS Act, nor to the annual limitation on cost sharing set forth

[18] HHS's enterprise-wide information security and privacy program was launched in FY 2003, to help protect HHS against potential IT threats and vulnerabilities. The program ensures compliance with Federal mandates and legislation, including the Federal Information Security Management Act and the President's Management Agenda. The HHS Cybersecurity Program plays an important role in protecting HHS's ability to provide mission-critical operations. In addition, the HHS Cybersecurity Program is the cornerstone of the HHS IT Strategic Plan.

[19] *See* section 9831 of the Code, section 732 of ERISA, and section 2722 of the PHS Act.

[20] The CAA amended the PHS Act statutory exemption for these products to include the new requirements established under the new Part D of the PHS Act. *See* section 102(a)(3)(B) of the No Surprises Act, which made conforming amendments to add the phrase ''and Part D'' to section 2722(b), (c)(1), (c)(2) and (c)(3) of the PHS Act.

under section 2707(b) of the PHS Act. If a plan or coverage were to lose its grandfathered status, it would be required to comply with both provisions, in addition to several other requirements. However, the CAA does not include an exception for grandfathered health plans that is comparable to section 1251 of the Affordable Care Act. Furthermore, section 102(d)(2) of the No Surprises Act amended section 1251(a) of the Affordable Care Act to clarify that the new and recodified patient protections provisions of the No Surprises Act, including those related to choice of health care professional, apply to grandfathered health plans. Therefore, the provisions of these proposed rules that apply to plans and issuers, proposed to be codified at 45 CFR 149.460, would apply to grandfathered plans.

The Departments seek comment on the use of the calendar year as the reporting period, including the time it typically takes to fully adjudicate and pay claims for air ambulance services (furnished by either participating or nonparticipating providers of air ambulance services), and the proposed data elements, as well as any potential challenges that plans and issuers may face in reporting the proposed data elements. The Departments also seek comment on the potential format for reporting the data.

F. Reporting Requirements Regarding Air Ambulance Services for Providers of Air Ambulance Services (45 CFR 149.460)

HHS proposes to amend 45 CFR part 149 by adding 45 CFR 149.460 to subpart E to describe the data reporting requirements for providers of air ambulance services. Proposed 45 CFR 149.460(a) includes the general requirements, the timing and form of the report, and the reporting requirements in circumstances where a transfer of business occurs. Proposed 45 CFR 149.460(b) outlines the information that would be required to be reported.

In proposed 45 CFR 149.460(a)(2), HHS interprets section 106(a) of the No Surprises Act to require providers of air ambulance services to submit data regarding air ambulance services on a calendar year basis, consistent with the proposal for the reporting period in proposed 45 CFR 149.230(a)(2). Moreover, typically, providers of air ambulance services do not operate based on plan years. HHS proposes that data with respect to a calendar year would include data relevant to air ambulance services furnished within the calendar year as well as data relevant to services for which payments were made within the calendar year (even if the service was provided in a different calendar year). HHS expects that these proposed rules would be finalized during 2021, as required in section 106(d) of the No Surprises Act, and consistent with the requirement at section 106(a) of the No Surprises Act on providers of air ambulance services to report the required data not later than 90 days after the last day of the applicable calendar year. Thus, HHS proposes that providers of air ambulance services would be required to submit the data for calendar year 2022 by March 31, 2023, and submit the data for calendar year 2023 by March 30, 2024. In order to ensure completeness of the data, in proposed 45 CFR 149.460(a)(3), HHS further proposes that a provider of air ambulance services that acquires a line or block of business from another provider of air ambulance services that provided such services during calendar years 2022 or 2023 would be required to report the air ambulance services data on behalf of the acquired business for the entire applicable calendar year. The Departments propose that these reporting requirements would apply to the selling and acquiring providers of air ambulance services if a sale or transfer occurs as a result of providers of air ambulance services being merged, combined, spun off, affected by, or engaging in any similar transaction during a calendar year. In addition, to ensure completeness and timeliness of reporting of all relevant air ambulance services data, the proposed rule would provide that the Secretary of HHS may provide examples of these transactions in guidance.

Section 106(a) of the No Surprises Act requires providers of air ambulance services to submit the following information regarding air ambulance services: Cost data separated to the maximum extent possible by air transportation costs and costs of medical services and supplies associated with furnishing air ambulance services; the number and location of all air ambulance bases; the number and type of aircraft operated by the provider; the number of transports by payor mix (including plans, issuers, government payors, and the uninsured); the number of claims denied by group health plans or health insurance issuers and the reasons for denials; and the number of emergency and non-emergency transports by base and by type of aircraft.

Section 106(a) of the No Surprises Act further requires providers of air ambulance services to report, in addition to the information described in the preceding paragraph, such other information regarding air ambulance services as the Secretaries of HHS and Transportation may specify. As noted in section II.E. of the preamble, section 106(c) of the No Surprises Act requires HHS to produce a comprehensive public report that must address several topics that require collection of additional information not specifically identified in section 106(a) of the No Surprises Act. These topics include: The percentage of providers of air ambulance services in various service delivery models (such as hospital-sponsored or municipality-sponsored programs); an assessment of the extent of competition among providers of air ambulance services on the basis of price and services offered; the average charges for air ambulance services; amounts paid by plans, issuers, and consumers; an assessment of the presence of air ambulance bases in, or with the capability to serve, rural areas and the relative growth in air ambulance bases in rural and urban areas over time; the percentage of providers of air ambulance services that have contracts with plans or issuers; unreasonable market concentration or excessive market domination that enable unreasonable price increases, and analyses of the debt collection practices against patients under various service delivery models; the frequency of patient balance billing, and the frequency of claims appeals made by providers of air ambulance services to plans and issuers; and any other data relating to air ambulance services determined necessary and appropriate by the Secretaries of HHS and Transportation. To address these topics, including performing the required analyses and assessments, HHS would need to be able to match the information collected from plans and issuers to the information collected from providers of air ambulance services.

Section 106(c)(2) of the No Surprises Act permits the Secretaries of HHS and Transportation to incorporate information from independent experts and third-party sources in the development of the report. HHS examined various sources of data and spoke with several industry experts and determined that in several areas, the data required to produce the analyses required in section 106(c)(1) of the No Surprises Act are not available from other sources. Therefore, in order to support the development of the report required in section 106(c)(1), HHS proposes collecting the necessary data from providers of air ambulance

services as described in these proposed rules. However, HHS seeks comment on additional data sources that may inform the development of the report, and the extent to which such data sources could be used in lieu of collecting specific data elements.

In proposed 45 CFR 149.460(b), HHS proposes requiring submission of air ambulance base-level and transport-level data on air ambulance services, as well as data elements not specifically identified in section 106(a) of the No Surprises Act, in order to collect the information necessary to satisfy these statutory requirements. For example, collection of data on revenue of the provider of air ambulance services from various sources, including non-transport sources, is necessary and appropriate to assess the competitiveness of the market for air ambulance services for purposes of the public report required under section 106(c) of the No Surprises Act, as well as to validate the data against the data collected from plans and issuers. Similarly, collection of air ambulance base-level data would help inform assessments regarding the competitiveness of the markets as well as capacity, service availability, and gaps in rural access to air ambulance services, which the Secretaries of HHS and Transportation are required to assess under section 106(c). Further, collection of transport-level data would enable the Secretaries of HHS and Transportation to conduct the assessments required under section 106(c) regarding the prices and services offered, the average charges for air ambulance services, and amounts paid by plans, issuers, and consumers, and would allow the Secretaries to complete the analyses of the debt collection practices, the frequency of patient balance billing, and the frequency of claims appeals.

Section 106(a)(2) of the No Surprises Act requires providers of air ambulance services to submit data on the number and location of all air ambulance bases they operate, the number and type of aircraft they operate, and the number of transports disaggregated by payor mix. In proposed 45 CFR 149.460(b)(2), HHS proposes collecting this information for each base, as well as additional information specific to the base and the aircraft that would enable the Secretaries of HHS and Transportation to conduct the assessments required in section 106(c) of the No Surprises Act. This additional information would include the NPIs associated with the base, the number and type of staff, the number and type of air ambulance transports per aircraft (including scene response patient transports, inter-facility patient transports, and transports of organs, medical personnel, and medical supplies), and the number of air ambulance responses for the base, including the number of such responses that did not result in transports. The additional information would also include the service delivery model(s) of the base (a hospital-owned or sponsored program, municipality-sponsored program, hospital independent partnership (hybrid) program, independent program, or tribally operated program in Alaska) and whether the base shares operational costs with the affiliated or sponsor organizations, to complement and support the data required to be collected under section 9823(b)(1)(B) of the Code, section 723(b)(1)(B) of ERISA, section 2799A–8(b)(1)(B) of the PHS Act, and section 106(a)(2)(D) of the No Surprises Act. The rationale for collecting this additional information is that service delivery models may vary by air ambulance base in addition to by provider. The additional information would also include base-specific data related to the providers' of air ambulance services in-network contractual arrangements with plans and issuers as well as other, non-direct payor contracts with plans, issuers, or other entities (including, but not limited to, TPAs or provider networks). This additional information would complement and support required data submissions and would also include air medical subscriptions or ambulance/emergency medical service membership programs associated with the base, and whether the base operates ground ambulance services in addition to air ambulance services. Finally, collection of this additional information would enable analyses under various provisions of section 106(c)(1) of the No Surprises Act.

Section 106(a) of the No Surprises Act requires providers of air ambulance services to submit cost data for air ambulance services, as HHS determines appropriate, and section 106(a) requires providers of air ambulance services to separate, to the maximum extent possible, air transportation costs and the costs of medical services and supplies. HHS reviewed the ambulance cost reporting forms developed for the Medicare Ground Ambulance Data Collection System, ambulance cost reporting forms developed by states, a cost report study prepared for the Association of Air Medical Services and Members, a review of several studies on air ambulances services, consulted with the Secretary of Transportation and subject matter experts, and held listening sessions and additional conversations with providers of air ambulance services. Based on these activities, HHS determined that the service delivery or organizational model of a provider of air ambulance services, the designation of the service area of a base (rural or urban),[21] and the identification of fixed and variable costs are all important factors affecting the costs and revenues of providers of air ambulance services. Because these factors vary at the air ambulance base level, HHS proposes in 45 CFR 149.460(b) to require submission of detailed cost and revenue data at the air ambulance base level, as well as at the regional and corporate level, for each air ambulance base, if applicable. The data HHS proposes to collect would enable the separation of fixed and variable costs of providers of air ambulance services, as well as medical costs as opposed to air transportation costs.

HHS proposes in 45 CFR 149.460(b)(3) that the required cost data be reported in the following categories: Labor costs by type of staff; facility costs by facility (including annual lease, rental, or mortgage costs, other costs of ownership, insurance, maintenance and improvements, utilities, taxes, computers and software, and other facility costs); vehicle costs by vehicle (including vendor fees, depreciation, safety enhancements, non-medical equipment (such as communications technology), registration and license, taxes, insurance, maintenance equipment and parts, fuel, and capital medical equipment); equipment and supplies; and overhead and vendor costs (including insurance, training, billing, accounting and finance, human resources, travel, marketing, sales, dispatch or call center, IT support, legal, medical direction, fees, fines, and taxes).

HHS proposes in 45 CFR 149.460(b)(4) that the required revenue data would include: Total revenue from paid air ambulance transports, by payor type, as well as revenue from other sources (such as contracts with facilities such as hospitals, prisons, and nursing homes); revenue from emergency air medical services other than for transports (for example, for transportation of organs, medical personnel, supplies, or equipment on an

[21] HHS may apply a custom definition or a broadly accepted definition, such as the one used by CMS for the Medicare Ambulance Fee Schedule, to determine whether air ambulance bases and services are provided in rural or urban areas. More detail on the Medicare Ambulance Fee Schedule is available at: *https://www.cms.gov/medicare/medicare-fee-for-service-payment/ambulancefeeschedule.*

emergency basis); revenue from sub-contracted ambulance services; fees for standby events; payments from non-direct contracts such as waiver, rental, lease, and supplemental arrangements; air medical subscriptions and ambulance or emergency medical service membership programs; charitable donations and foundation funding; program-related investments; receipt of local taxes earmarked for emergency medical services; contract revenues from local governments in return for air ambulance services; enterprise funds and utility rates; sales of assets and services; bond or debt financing; state or local donation of vehicles or durable equipment; and funding grants or the provision of time-limited funding from a government entity (including Federal, state, local, or other). The revenue data would enable the Secretaries of HHS and Transportation to conduct the holistic assessments required in various provisions of section 106(c)(1) of the No Surprises Act, including with respect to the ability of providers of air ambulance services to compete on the basis of price and services in various geographic areas, these providers' financial capability to serve rural areas, the relationship of the average charges for air ambulance services to business costs and market dynamics and characteristics, potential anti-competitive behaviors by providers of air ambulance services, and other factors that may affect the costs of air ambulance services.

Finally, section 106(a)(2) of the No Surprises Act requires providers of air ambulance services to submit the following data regarding air ambulance transports: The number of transports by payor mix (group health plans, health insurance issuers, state and Federal Government payors, and the uninsured); the number of claims for air ambulance services that have been denied payment by plans or issuers and the reasons for such denials; and the number of emergent and non-emergent transports disaggregated by air ambulance base and type of aircraft. In 45 CFR 149.460(b)(5), HHS proposes to require submission of transport-level data on air ambulance services in order to satisfy these statutory reporting requirements, as well as to collect the data necessary to enable HHS, in consultation with the Secretary of Transportation, to conduct the assessments required in section 106(c) of the No Surprises Act.

The transport-level data elements in addition to those specifically identified in section 106(a) of the No Surprises Act that HHS proposes to collect from providers of air ambulance services include: Date of service; billing NPI and CPT/HCPCS codes information; and certain information about the transport (such as the air ambulance base, flight duration, loaded miles, pick-up (origin) and drop-off (destination) locations and the point of ambulance pick-up zip code, and whether the transport was a scene response patient transport, inter-facility patient transport, or other transport (such as organ, medical personnel, or medical supplies transport)). These data elements would enable the Secretaries of HHS and Transportation to identify, combine, and validate the information collected from plans and issuers, and the information collected from providers of air ambulance services, as well as evaluate potential gaps in rural access. Consistent with the requirements in section 106(a) of the No Surprises Act and to enable HHS to combine and validate the information collected from providers of air ambulance services under these proposed rules with air ambulance data from other sources, as well as to enable HHS to assess abusive patient collection practices across various payors as required in section 106(c)(1)(I) of the No Surprises Act, HHS proposes requiring identification of the primary payor type for each transport, such as Medicare fee-for-service (FFS), Medicare Advantage, Medicaid, Veterans' Health Administration, TRICARE, Indian Health Service, group health plan, health insurance issuer, FEHB plan, Workers' Compensation, patient cost-sharing, and patient self-pay. Further, to satisfy the requirements for the comprehensive public report described in section 106(c) of the No Surprises Act, HHS proposes that the transport-level data elements should include information regarding the contractual arrangement with the plan or issuer, if applicable, to furnish air ambulance services under the plan or coverage, respectively, to support the assessment required in section 106(c)(1)(F) of the No Surprises Act, as well as the payment methodology for the transport (such as the base rate, mileage, and intervention or other charges), if applicable, as recommended by experts. For the same reasons, HHS proposes that the transport-level data elements should also include: Certain claim adjudication information (including whether the claim was paid, denied, or appealed, and the reason for the denial or the outcome of the appeal, if applicable) to support the data collection and analyses required in sections 106(a)(2)(E) and (c)(1)(J) of the No Surprises Act; certain payment information (including submitted charges, amounts paid by the payor not including the patient, and cost-sharing amount (if applicable)) to support the assessment required in section 106(c)(1)(C) of the No Surprises Act; the amount billed to the patient, the amount collected from the patient, and whether the bill was referred for collection, including lawsuits, liens, or wage garnishment actions to support the assessments required in section 106(c)(1)(G) and (c)(1)(I) of the No Surprises Act; and information on any payments from sources other than the primary payor, such as membership fees and state or municipal subsidies to support the analyses required in section 106(c)(1)(B), (c)(1)(H), and (c)(1)(K) of the No Surprises Act.

In order to protect stakeholder and consumer privacy, particularly when collecting transport-level data, HHS would take precautions to protect the confidentiality of transport-level data. HHS proposes to collect only that transport-level data that would be sufficient for producing the comprehensive report required by the statute. HHS intends to collect and maintain the information using information technology (IT) systems that are designed to meet all of the security standard protocols established under Federal law or by HHS relevant to such information.

HHS is publishing the proposed information collection for public comment at the same time as or shortly after these proposed rules. The proposed information collection would include a proposed data template and instructions.

HHS seeks comment on the use of the calendar year as the reporting period, including the time it typically takes payors to fully adjudicate and pay claims for air ambulance services (furnished by either participating or nonparticipating providers of air ambulance services), the proposed data elements described in this section of the preamble, the appropriate levels for reporting of these data elements (regional/corporate, base, transport), and potential challenges that providers of air ambulance services may face in reporting the proposed data elements, including any special considerations for the reporting of the proposed data elements with respect to municipality and other government-owned or sponsored providers of air ambulance services. HHS also seeks comment on the potential format for reporting the data.

III. Provisions of the Proposed Rules—Department of HHS

A. Part 144—Requirements Relating to Health Insurance Coverage

1. Basis and Purpose (45 CFR 144.101)

HHS proposes conforming amendments to 45 CFR 144.101 to reflect the proposed amendments to 45 CFR part 150, described in section III.C of the preamble. Specifically, HHS proposes to revise 45 CFR 144.101(e)[22] to include references to the enforcement-related provisions added by the No Surprises Act (section 2799B–4 of the PHS Act and section 106(e) of the No Surprises Act), and to specify that the enforcement provisions in 45 CFR part 150 apply to the provisions of 45 CFR part 149 concerning group or individual health insurance, providers and facilities, and providers of air ambulance services.

B. Part 148—Requirements for the Individual Health Insurance Market

1. Authority

HHS proposes to make technical corrections to the authority listed for 45 CFR part 148. More specifically, HHS proposes to update the list to reference the Federal insurance reforms applicable to the individual market captured in PHS Act sections 2722 through 2763, codified at 42 U.S.C. 300gg–21 through 300gg–63, along with PHS Act sections 2791 and 2792, codified at 42 U.S.C. 300gg–91 and 300gg–92. This would include new section 2746 of the PHS Act, as added by section 202(c) of Title II of Division BB of the CAA, in the list of authorities for 45 CFR part 148. Finally, HHS proposes to remove the reference to PHS Act section 2711, codified at 42 U.S.C. 300gg–11, because this statutory provision is not implemented as part of the HHS regulations in 45 CFR part 148.[23]

2. Basis and Purpose (45 CFR 148.101)

HHS proposes to amend 45 CFR 148.101 to expand the purpose of 45 CFR part 148. Specifically, HHS proposes to add a reference to the new reporting and disclosure requirements regarding agent and broker compensation that these proposed rules would add as a new subpart F to 45 CFR part 148 to implement the requirements of section 2746 of the PHS Act, as added by section 202(c) of Title II of Division BB of the CAA.

3. Scope and Applicability Date (45 CFR 148.102)

HHS proposes to amend 45 CFR 148.102 by adding paragraph (a)(3) to specify that the requirements in proposed 45 CFR 148.410 would apply to health insurance issuers of individual health insurance coverage and short-term, limited-duration insurance. HHS also proposes to amend paragraph (b) by excepting 45 CFR 148.410 from the applicability dates specified in paragraph (b), as these proposed rules set forth the applicability date specific to 45 CFR 148.410 in that section.

Section 2746 of the PHS Act, as added by section 202(c) of Title II of Division BB of the CAA, applies to grandfathered individual health insurance coverage, for the reasons set forth in section II.E. of the preamble. Therefore, the provisions in proposed 45 CFR 148.410 that apply to individual health insurance coverage, would apply to grandfathered as well as nongrandfathered individual health insurance coverage.

4. Subpart F—Requirements Related to Reporting and Disclosure

HHS proposes to add a new subpart F to 45 CFR part 148 and new 45 CFR 148.410 within that subpart to implement the requirements of section 2746 of the PHS Act, as added by section 202(c) of Title II of Division BB of the CAA. Section 2746 of the PHS Act requires health insurance issuers offering individual health insurance coverage or short-term, limited-duration insurance to make disclosures to enrollees and submit reports to HHS regarding direct and indirect compensation provided by the issuer to an agent or broker associated with enrolling individuals in such coverage. Sections 2746(b) and (c) of the PHS Act detail the specific requirements for disclosure and reporting, respectively. HHS proposes to codify these requirements in new proposed 45 CFR 148.410.

Agents and brokers enter into appointment arrangements with health insurance issuers; these arrangements, which are generally regulated by state law, govern compensation provided to agents and brokers for assisting consumer enrollment in an issuer's plans. The specific compensation arrangement between a health insurance issuer and the agent or broker is typically laid out in a written document such as a commission schedule. Compensation arrangements may also include other types of compensation, such as fees and bonuses. Section 2746 of the PHS Act improves the transparency of this compensation system by requiring the disclosure of this compensation information to consumers and reporting of this information to HHS.

5. Subpart F—Requirements Related to Reporting and Disclosure—Disclosure of Agent and Broker Compensation to Individuals in Individual Health Insurance Coverage or Short-Term, Limited-Duration Insurance (45 CFR 148.410)

a. Health Insurance Issuer Standards

HHS proposes to add, in 45 CFR 148.410(a), a general statement of the obligations of health insurance issuers offering individual health insurance coverage or short-term, limited-duration insurance, to disclose to policyholders and report to HHS on an annual basis direct and indirect compensation provided by the issuer to an agent or broker associated with enrolling individuals in such coverage.

HHS proposes to add, in 45 CFR 148.410(b), definitions of key terms in these proposed rules. HHS proposes to define ''agent or broker'' through a cross-reference to the definition for the term in 45 CFR 155.20. Section 2746 of the PHS Act applies to both direct and indirect compensation paid to an agent or broker by a health insurance issuer offering individual health insurance coverage or short-term, limited-duration insurance, but does not define direct and indirect compensation. Therefore, HHS proposes regulatory definitions for these key terms that define direct and indirect compensation in a manner that covers all forms of consideration that might be transferred between an issuer offering individual health insurance coverage or short-term, limited-duration insurance and an agent or broker for enrollment in such coverage, regardless of the method by which that consideration is transferred.

In new proposed 45 CFR 148.410(b)(3), direct compensation is defined as monetary amounts, including sales and base commissions, paid by an issuer that are attributable directly to the policy, certificate, or contract of insurance and that are paid to an agent or broker for the sale, placement, or renewal of individual health insurance coverage or short-term, limited-duration insurance. HHS proposes in new proposed 45 CFR 148.410(b)(4) to define

[22] The July 2021 interim final rules redesignated paragraph (d) of 45 CFR 144.101 as paragraph (e) and further redesignated paragraph (e) of 45 CFR 144.101 as paragraph (f). Although the effective date of the July 2021 interim final rules is not until September 13, 2021, references to paragraph (e) in these proposed rules are references to the newly redesignated paragraph (e) (formerly paragraph (d)). This rule also proposes a technical correction to 45 CFR 144.103(e)(2) to correct a cross-reference that was inadvertently not updated when paragraph (d) was redesignated.

[23] *See* 45 CFR 147.126. *Also see* 45 CFR 146.123.

indirect compensation as payments by an issuer attributable indirectly to a policy, certificate, or contract of insurance to agents, brokers, and other persons for items other than sales and base commission. Examples of indirect compensation include service fees, consulting fees, finders' fees, profitability and persistency bonuses, awards, prizes, volume-based incentives, and non-monetary forms of compensation. HHS proposes in new proposed 45 CFR 148.410(b)(2) to define a commission schedule as an itemized list or table that provides the commission levels that are paid by an issuer for the sale, placement, or renewal of individual health insurance coverage or short-term, limited-duration insurance. These definitions are based on the most common and essential terms HHS has observed in various examples of issuer commission schedules in the individual market. HHS proposes to define policyholder in new proposed 45 CFR 148.410(b)(5) for purposes of this section as the individual who purchases individual health insurance coverage or short-term, limited-duration insurance and is responsible for the payment of premiums.

b. Disclosure Requirements

To ensure transparency of agent and broker compensation when purchasing individual health insurance coverage or short-term, limited-duration insurance, and to implement sections 2746(b)(1) and (2) of the PHS Act, HHS proposes in new proposed 45 CFR 148.410(c) to codify the requirement that health insurance issuers offering individual health insurance coverage or short-term, limited-duration insurance must disclose to a potential or existing policyholder the amount of direct and indirect compensation provided to an agent or broker associated with enrolling the policyholder in the individual health insurance coverage or short-term, limited-duration insurance. This disclosure would be required to include the commission schedule used to determine the compensation owed to an agent or broker as part of the appointment contract between the agent or broker and the health insurance issuer offering individual health insurance coverage or short-term, limited-duration insurance, as well as the structure for compensation not captured on the commission schedule.

Consistent with the requirements in section 2746(b) of the PHS Act, HHS proposes in new proposed 45 CFR 148.410(c)(2) that for new, initial enrollments, this disclosure would be required to be made prior to when potential policyholders finalize plan selection and also to be included on any documentation confirming the initial enrollment, including enrollment documentation required in applicable state or Federal law or an initial enrollment package. Section 2746(b)(2) of the PHS Act requires health insurance issuers offering individual health insurance coverage or short-term, limited-duration insurance to include the disclosure on any documentation confirming the individual's enrollment. HHS recognizes that the term ''any documentation'' could be read broadly to refer to any documentation that a health insurance issuer provides during a plan year that serves as confirmation that the individual is enrolled in the coverage. However, HHS is of the view that requiring such a broad reading of the statutory requirement would be burdensome to issuers, without producing a commensurate benefit to individuals who receive the disclosure. Therefore, HHS proposes to interpret the statutory language more narrowly. Specifically, with respect to initial enrollments, HHS proposes, in 45 CFR 148.410(c)(2), to require disclosure on any documentation confirming initial enrollment, including enrollment documentation required in applicable state or Federal law or an initial enrollment package.[24] In addition, consistent with the provisions in section 2746(d) of the PHS Act that recognize the need to account for the different processes for plan renewals, HHS proposes in new proposed 45 CFR 148.410(c)(3) that for renewals of enrollment in a plan, an issuer must provide the required disclosure to the policyholder with the renewal notice required in 45 CFR 147.106(f) or 148.122(i), if applicable. HHS proposes this because plan renewals in the individual market generally do not have a moment when a consumer finalizes plan selection, as many of these renewals occur automatically, and because these renewal notices can also be considered to confirm enrollment in the plan for the upcoming plan year. Therefore, issuers would be required to provide the required disclosure as part of an initial enrollment package or renewal notice, but would not be required to provide the required disclosure on other documents that could be considered to confirm enrollment, such as explanations of benefits.

In the absence of any documentation required by applicable state or Federal law to confirm initial enrollment, or the requirement for a notice of renewal of coverage with respect to short-term, limited-duration insurance, HHS proposes, as a default in new proposed 45 CFR 148.410(c)(4), that issuers would be required to provide the disclosure with the invoice for the first premium payment for the initial coverage term and for each renewal period. HHS invites comment on whether there are other forms of documentation confirming enrollment for either individual health insurance coverage or short-term, limited-duration insurance on which disclosure of compensation information should be required and whether requiring delivery of the disclosure at another time, such as between the final plan selection and issuance of the invoice for the first premium payment, may be more appropriate.

HHS proposes to codify in new proposed 45 CFR 148.410(c)(5) minimum requirements for disclosure of direct and indirect compensation information. HHS proposes that, at a minimum, a health insurance issuer offering individual health insurance coverage or short-term, limited-duration insurance could satisfy the disclosure requirement using the commission schedules or other documents that detail the applicable commission levels and indirect compensation, such as bonuses. When used to satisfy this new disclosure requirement, these documents must clearly specify commissions paid by an issuer to an agent or broker for the applicable plans for which the agent or broker has an appointment arrangement with the issuer, distinguish between commission payments for new enrollments and such payments for renewed enrollments if the issuer differentiates compensation for those two types of enrollment, and explain the qualifying thresholds for the payment of indirect compensation to an agent or broker. Requiring that the disclosure must include a commission schedule would ensure a consistent and readily available document for all policyholders to use to understand the compensation that their insurance agent or broker would receive and make informed purchasing decisions. If an issuer of individual health insurance coverage or short-term, limited-duration insurance also offers direct or indirect compensation that is not captured by the commission schedule, the issuer must supplement the disclosure of the information on the commission

[24] For example, pursuant to 45 CFR 147.200(a)(1)(iv), a health insurance issuer offering individual health insurance coverage must provide a summary of benefits and coverage to an individual covered under the policy upon application, by the first day of coverage (if there are changes), upon renewal, reissuance, or reenrollment, and upon request.

schedule with additional documentation disclosing such other compensation.

HHS expects that issuers subject to the requirements of this section would integrate this new disclosure requirement into their existing compliance operations. An issuer's obligation could be satisfied by the agent or broker making the required disclosure on the issuer's behalf. For example, issuers may provide agents or brokers who have an appointment arrangement with the issuer printed versions of the commission schedule and other documentation disclosing direct and indirect compensation, if applicable, to attach to enrollment materials or may provide a link to an online version of the document. This would equip agents and brokers with the information necessary to ensure that consumers would be aware of any compensation being paid by the issuer to the agent or broker prior to enrolling. Whether issuers choose to comply directly with this obligation or partner with their agents and brokers to provide the required disclosure, materials provided would be required to be made available in accessible formats for people with disabilities (at no cost to the individual) and people with limited English proficiency. Issuers would be required to comply with applicable Federal language and accessibility requirements regarding disclosure documents.[25] This typically requires documents to be made available in any of the 15 most common languages in the state.[26] Issuers would also be required to ensure effective communication with individuals with disabilities, including provision of appropriate auxiliary aids and services at no cost to the individual. Auxiliary aids and services may include interpreters, large print materials, accessible information and communication technology, open and closed captioning, and other aids or services for persons who are blind or have low vision, or who are deaf or hard of hearing. Information provided through information and communication technology also must be accessible to individuals with disabilities, unless certain exceptions apply.[27] HHS is of the view that individuals cannot receive meaningful disclosure if they cannot understand the information provided in the disclosure documents. HHS seeks comment on these proposals.

These proposed rules do not prescribe a specific format for issuers' commission schedules or other documents that detail the applicable direct or indirect compensation. Instead, HHS proposes in 45 CFR 148.410(c)(5) that, to the extent the commission schedules or other documents that detail the applicable direct or indirect compensation are used to satisfy the requirements of this section, the schedules or other documents would be required to comply with the minimum standards outlined therein regarding agent and broker compensation. This proposed requisite information includes information on initial and renewal commissions and explanation of the qualifying thresholds for the payment of indirect compensation to an agent and broker, at a minimum. Commission schedules are widely used in the health insurance industry and customarily include this minimum informational content with respect to initial and renewal commission rates. However, the format can vary by issuer. It is HHS's view, at this time, that the benefits of prescribing and standardizing the proposed minimum required content in a specific format for commission schedules would not outweigh the costs of implementation. HHS is also not proposing a specific format for the additional documentation that detail the applicable direct or indirect compensation. Instead, HHS is proposing minimum standards for the information that must be disclosed and permitting issuers to determine what documentation may contain that information and be used to satisfy the disclosure requirement, whether the issuer calls it a commission schedule or refers to it by another term. HHS invites comments on these proposals, especially the considerations of costs and benefits associated with standardizing the format for compensation disclosure.

HHS proposes that issuers would be required to make the necessary disclosures prior to the potential policyholder finalizing plan selection and, in addition, that the disclosure be included on any documentation confirming the individual's enrollment, as required under section 2746(b) of the PHS Act. This requirement would ensure that the person who is choosing the coverage and agreeing to be financially responsible for premiums and other payments due under the insurance contract (who HHS proposes to define as the 'policyholder') can evaluate whether and to what extent the advice they received from an agent or broker may be influenced by the agent's or broker's compensation arrangement with an issuer prior to finalizing the plan selection.

HHS considered whether to propose requiring that issuers make these required disclosures to all plan enrollees, but are of the view that such a requirement would be needlessly burdensome. First, requiring issuers to disclose direct and indirect agent or broker compensation to each person in an enrollment group would be unreasonable as many enrollees are infants, minor children, or otherwise not responsible for choosing their health insurance coverage. As noted, requiring the disclosure be made to the policyholder would allow that individual to evaluate whether and to what extent the advice they received from an agent or broker may be influenced by the compensation received. HHS expects that the policyholder would be able to relay information from the disclosure to the other enrollees on the policy, similar to how the policyholder is entrusted to relay other information about the plan selection to the other enrollees in the policy. HHS is also of the view that requiring issuers to make these disclosures to each enrollee could place a larger burden on issuers and enrollees than necessary without adding meaningful consumer benefit. For example, to the extent an issuer uses the agent or broker to provide the disclosure, requiring disclosure to be made to all enrollees prior to finalizing the plan selection would necessitate an adult, seeking to purchase coverage for their family, to bring that entire family to the office of the insurance agent or broker in order to receive the disclosure of information about direct and indirect compensation before finalizing the plan selection in which the family members would be enrolled.

A similar burden exists for virtual or telephonic enrollments. The agent or broker assisting with the enrollment would need to contact each individual on the plan prior to finalizing plan selection, which could be time-consuming or nigh impossible. This would require all plan enrollees to be near a phone or computer at the time of enrollment and either answer a phone call or respond to an email prior to

[25] *See,* for example, Guidance and Population Data for Exchanges, Qualified Health Plan Issuers, and Web-Brokers to Ensure Meaningful Access by Limited-English Proficient Speakers Under 45 CFR 155.205(c) and 156.250 (March 30, 2016) *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Language-access guidance.pdf* and ''Appendix A—Top 15 Non-English Languages by State'' *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Appendix-A-Top-15-non-englishby-state-MM-508_update12-20-16.pd. See also* 42 U.S.C. 18116, 42 U.S.C. 2000d *et seq.,* 269 U.S.C. 794, 42 U.S.C. 12101 *et seq.*

[26] Ibid.

[27] *See* 42 U.S.C. 18116, 42 U.S.C. 2000d *et seq.,* 269 U.S.C. 794, 42 U.S.C. 12101 *et seq.*

finalizing plan selection. This amount of coordination seems unduly burdensome on consumers and would virtually eliminate parents' ability to finalize a plan selection while their children are in school, as the children would generally be unable to be contacted by the agent or broker while attending classes. In addition, emails or phone calls from unknown individuals are often not answered or responded to promptly, if at all, meaning a policyholder would need to first contact the other plan enrollees, telling them to expect a call from the agent or broker, which adds another layer of coordination and complexity. Additionally, children or developmentally challenged individuals may not be mentally capable of providing their consent or may not have an email address or phone number, meaning if they were not physically with the policyholder at the time directly prior to finalizing plan selection, contacting them would be impossible.

c. Reporting Requirements

To implement the requirement at section 2746(c) of the PHS Act that health insurance issuers offering individual health insurance coverage or short-term, limited-duration insurance must annually report to HHS prior to the beginning of open enrollment any direct or indirect compensation provided to an agent or broker associated with enrolling individuals in such coverage, HHS proposes in new proposed 45 CFR 148.410(d)(1) to require issuers to submit to HHS, in a form and manner prescribed by the Secretary, any direct and indirect compensation provided to agents and brokers associated with enrolling individuals in individual health insurance coverage and short-term, limited-duration insurance sold by the issuer. HHS intends to collect data similar to the data collected by DOL on compensation of insurance producers for group health plans subject to the Form 5500 reporting requirement.

DOL utilizes the Form 5500 series as part of its overall reporting and disclosure under ERISA. DOL collects information related to insurance on Form 5500 Schedule A, which includes the identifying information for the issuer and the agent or broker, and the amount of compensation paid to agents and brokers. Issuers would be expected to submit the reporting data to HHS through an online system. HHS is proposing to require issuers provide, for each payment recipient and intermediary organization in a specific month of the reporting year, a single row of data in comma-separated values (CSV) format containing the following fields/columns: (1) Payor Federal Tax ID Number (FTIN); (2) Recipient Identifier Type (''NPN'' for writing agents or ''FTIN'' for payments made to intermediaries); (3) Recipient Identifier Value (the actual number); (4) The date on which the payment was made to the payment recipient; (5) Direct Compensation, expressed as a dollar amount (the commission); (6) Indirect Compensation, expressed as a dollar amount, if any (if indirect compensation payment amount was made in that month, for example, a bonus was paid out; bonuses for annual performance are accounted for in December of the reporting year rather than disaggregated into 12 parts for each month); (7) the basis for indirect compensation—a text field allowing entry of what the grounds for the indirect compensation were (bonus, incentive, etc.); and (8) other information specified by the Secretary, which may include, for example, distinguishing between individual health insurance coverage and short-term, limited-duration insurance, listing the appointment arrangement duration, and providing the number of plans the agent sold.

HHS proposes to add new proposed 45 CFR 148.410(d)(2) to specify that the reporting by issuers would be required to reflect both compensation arrangements directly between the writing agent or broker and the issuer, and compensation arrangements from the issuer to the writing agent or broker involving one or more intermediary organizations in connection with the sale of individual health insurance coverage or short-term, limited-duration insurance. Examples of intermediary organizations that are often involved in the sale, placement, or renewal of individual health insurance coverage or short-term, limited-duration insurance include general line agencies and marketing organizations. This proposed approach would ensure that the information reported annually to HHS reflects the full amount of compensation received by agents and brokers related to the sale, placement, or renewal of individual health insurance coverage and short-term, limited-duration insurance.

HHS proposes that the annual report submitted by issuers to HHS contain more detailed information than the disclosure to policyholders, including information related to intermediary organizations as well as actual compensation amounts rather than payment structures, because HHS proposes for the report to be due after the end of the year for which compensation was paid and prior to the beginning of open enrollment for the following year. This timeline would enable the report to HHS to provide a more complete reflection of compensation actually provided throughout the previous calendar year than the disclosure to consumers, which must be provided prior to individuals finalizing their plan selections and at renewal. In addition, requiring issuers to provide information to policyholders on the compensation arrangements between insurance agents or brokers and intermediary organizations, like general agencies, would substantially increase the complexity of the disclosure materials without providing the same level of consumer benefit. Disclosure of direct and indirect compensation is intended to inform the consumer of considerations, other than the consumer's best interests, that may impact the guidance and decision-making of the insurance agent or broker. HHS is of the view that information about whether that compensation would first be paid to a general agency and the amount of compensation that agency would claim before disbursing to the agent would not have a similar impact on the consumer's decision-making process. However, reporting of this additional information to HHS would assist HHS in monitoring and enforcing compliance with the disclosure requirements and ensuring that consumer disclosures accurately and adequately reflect direct or indirect compensation payment practices.

HHS proposes in new proposed 45 CFR 148.410(d)(4) to require submission to HHS of the required reports on an annual basis by the last business day of July of the calendar year following the applicable reporting period. For example, reporting for calendar year 2022 would be due by July 31, 2023. Under this proposed rule, for non-calendar year policies, which may exist in the short-term, limited-duration insurance market, issuers would be required to split the agent and broker compensation between the reports for two calendar years. For example, for a short-term, limited-duration policy in effect from December 1, 2022 to February 28, 2023, an issuer would be required to report the compensation paid on the policy for December 2022 in the report due by July 31, 2023 and the compensation paid on the policy for January and February 2023 in the report due July 31, 2024. HHS seeks comment on this proposal, and would provide additional guidance in the final rule on special cases, as may be necessary, including indirect compensation paid

for enrollments that span multiple years based on comments on this proposed rule and feedback from regulated entities subject to these requirements and other stakeholders.

Section 2746(c) of the PHS Act states that issuers must report the data to HHS prior to the beginning of open enrollment. The last business day of July would align with the statute and would avoid significant overlap with the qualified health plan certification process and states' rate and form review processes. This date would also provide HHS with adequate time to review the submitted reports prior to the beginning of open enrollment for the following year and would provide issuers ample time after the reporting year to prepare and validate the information.

d. Applicability

In new proposed 45 CFR 148.410(e), HHS is proposing to codify the provisions of section 2746(d) of the PHS Act, which establishes a transition rule for these new requirements and provides that the requirements would not be applicable to contracts executed between health insurance issuers offering individual health insurance coverage or short-term, limited-duration insurance and agents or brokers before December 27, 2021. HHS therefore proposes that these new requirements would apply to contracts executed between an agent or broker and a health insurance issuer offering individual health insurance coverage or short-term, limited-duration insurance on or after December 27, 2021. For purposes of determining the date of contract execution, HHS proposes to deem the execution of contractual addenda or revisions to the material terms of a pre-existing contract to be the execution of a new contract to which the disclosure and reporting requirements would apply.

HHS does not expect that many appointment contracts would be newly executed between the effective date of the statutory requirement, December 27, 2021, and the beginning of the first reporting period proposed in these proposed rules, January 1, 2022. As a result, under this proposal, HHS may exercise discretion and adopt a temporary policy of relaxed enforcement in connection with the enforcement of the proposed reporting requirement on a case-by-case basis for appointment contracts executed and policies effective within the period between December 27, 2021 and January 1, 2022, and encourages states that are the primary enforcers of these requirements to adopt a similar enforcement approach.

HHS seeks comment on all aspects of these proposals regarding the definitions, disclosure requirements, reporting requirements, and applicability.

C. Part 150—CMS Enforcement of Group and Individual Insurance Market and Provider and Facility Requirements

Section 2723 of the PHS Act contemplates that states would exercise primary enforcement authority with respect to issuers that offer health insurance coverage in the individual or group markets within the state. If a state notifies HHS that it does not have the authority to enforce PHS Act requirements, or if HHS determines that a state is not substantially enforcing PHS Act requirements with respect to issuers, HHS has the responsibility to enforce the PHS Act provision or provisions in that state and has delegated this enforcement authority to CMS.

The CAA enacted new provisions of the PHS Act that require health insurance issuers to submit certain information to HHS or the Departments. This includes the requirement under section 2746(c) for issuers that offer individual health insurance coverage and issuers that offer short-term, limited-duration insurance coverage to annually report to the Secretary of HHS, prior to the beginning of open enrollment, any direct or indirect compensation provided to an agent or broker associated with enrolling individuals in such coverage. Health insurance issuers must also report to the Departments certain information regarding air ambulance services under section 2799A–8 and certain information regarding pharmacy benefits and drug costs under section 2799A–10. Additionally, in accordance with section 2799A–9(a)(4), issuers must submit to HHS an annual attestation of compliance with the prohibition of gag clauses on price and quality information under section 2799A–9. Under section 2723 of the PHS Act, states have the opportunity to be the primary enforcers of sections 2746(c), 2799A–8, 2799A–9(a)(4), and 2799A–10. However, HHS is of the view that states would not look to enforce these PHS Act provisions because they are requirements for issuers to report to HHS or the Departments, and states would not have access to the submissions to assess compliance. Instead, HHS anticipates that states would focus resources on implementing and enforcing the other requirements in the CAA. HHS therefore proposes to have direct enforcement authority for these issuer requirements in all states, unless the state notifies HHS of its intent to enforce. HHS solicits comments on this approach and whether there are states that intend to assist with enforcement of any of these requirements.

In cases where there is a question about whether the state is failing to substantially enforce one or more PHS Act requirements, the procedures outlined in 45 CFR 150.201 through 150.221 govern. First, if CMS is satisfied that there is a reasonable question whether there has been a failure to substantially enforce one or more PHS Act requirements, CMS notifies the appropriate state parties, providing 30 days to respond. Then, if CMS makes a preliminary determination that the state is failing to substantially enforce, the state is provided an opportunity to show evidence of substantial enforcement. If CMS determines that the state's failure to substantially enforce has not been corrected, then CMS would send a final determination notice to the state identifying which requirements CMS would directly enforce and the effective date for such enforcement. Finally, current regulations provide a transition mechanism by which a state can assume or resume primary enforcement of the applicable PHS Act requirement(s).

Most states currently work to ensure that issuers offering health insurance coverage in the individual and group markets comply with applicable requirements of the PHS Act. Although some states lack direct state statutory authority to enforce, CMS has worked with many of these states to implement collaborative enforcement agreements. Through these agreements, a state performs the same regulatory functions with respect to the applicable individual and group insurance market requirements of Title XXVII of the PHS Act (market reform provisions) as it does to ensure compliance with state law, and seeks to achieve voluntary compliance from issuers if the state finds a potential violation. Similarly, consumers continue to contact the state with inquiries and to submit complaints relating to the market reform provisions. Under this collaborative approach, if the state finds a potential violation and is unable to obtain voluntary compliance from an issuer, it would refer the matter to CMS for possible enforcement action. If a state lacks authority or ability to enforce PHS Act requirements, then CMS would directly enforce the relevant market reform provisions in the state with respect to health insurance issuers in the group and individual markets. Finally, CMS directly enforces the relevant market reform provisions with

respect to non-Federal governmental plans in all states.

When CMS is responsible for enforcement with respect to issuers and non-Federal governmental plans, enforcement tools CMS uses in accordance with 45 CFR 150.301 through 150.347, include policy form review, complaint-driven investigations, and market conduct examinations. CMS also has authority to impose civil money penalties against health insurance issuers in a state in which CMS is directly enforcing the PHS Act, and against non-Federal governmental plan sponsors in all states that fail to comply with applicable PHS Act requirements.[28]

The CAA adds additional PHS Act requirements that apply to group health plans, including non-Federal governmental plans, health insurance issuers, providers, including providers of air ambulance services (providers), and health care facilities (facilities). CMS would enforce these provisions to the extent they apply to non-Federal governmental plans in all states and to issuers in states where CMS directly enforces in the aforementioned manner. With respect to enforcement of the requirements applicable to providers and facilities, the CAA largely mirrors the current issuer enforcement structure: Namely, states are the primary enforcers, with CMS only enforcing if a state fails to substantially enforce, and these proposed rules reflect this structure. However, the provisions of section 106(a) of the No Surprises Act that apply to providers of air ambulance services are enforced directly by CMS. The CAA and these proposed rules would require CMS to follow the process set forth in section 1128A of the SSA to impose civil money penalties on providers or facilities for non-compliance with provisions of Part E of Title XXVII of the PHS Act and on providers of air ambulance services for non-compliance with the requirement to submit data under section 106(a) of the No Surprises Act. The applicable state authority involved in oversight and enforcement of providers and facilities would likely be different in most, if not all, states from the applicable state authority responsible for oversight and enforcement over health insurance issuers.

HHS proposes to make conforming amendments to existing regulations in subparts A, B, and D and to add a new subpart E to 45 CFR part 150 to provide for CMS direct enforcement when a state is not substantially enforcing PHS Act requirements pertaining to providers and facilities and when a provider of air ambulance services fails to submit data required under section 106(e) of the No Surprises Act. HHS also proposes to amend existing regulations to add references to 45 CFR part 149, which implements these PHS Act requirements and to which the enforcement regulations in 45 CFR part 150 would also apply. Additionally, HHS proposes revising subpart C of 45 CFR part 150 to align these provisions with industry standards and clarify the existing CMS enforcement procedures, and equip CMS with additional tools to fulfill its enforcement responsibilities under the PHS Act.

HHS proposes revising the title of 45 CFR part 150 to reflect the extension of CMS's enforcement authority to providers and facilities in states that are not substantially enforcing the requirements in Part E of Title XXVII of the PHS Act and to providers of air ambulance services for purposes of the data submission requirements under section 106(e) of the No Surprises Act.

1. Basis and Scope (45 CFR 150.101)

HHS proposes to add to 45 CFR 150.101(a), which captures the basis of 45 CFR part 150, references to section 2799B–4 of the PHS Act, which subjects providers and facilities to the enforcement provisions of the PHS Act that HHS proposes to implement in 45 CFR part 150, and section 106(e) of the No Surprises Act, which subjects providers of air ambulance services to civil money penalties for failure to comply with data reporting requirements. HHS also proposes to make conforming edits to expand the scope of 45 CFR part 150 in 45 CFR 150.101(b), including to specifically outline the enforcement framework that HHS proposes to implement under subpart E of 45 CFR part 150. This includes proposed amendments to 45 CFR 150.101(b)(2) to add a reference to 45 CFR part 149 to expand the scope of the framework applicable to enforcement over health insurance issuers. In addition, HHS proposes to add a new paragraph (b)(3) to capture the scope of the framework applicable to enforcement over providers and facilities.

2. Definitions (45 CFR 150.103)

HHS proposes to amend 45 CFR 150.103 to revise the introductory text to add a reference to 45 CFR part 149 and to add definitions related to enforcement against providers and facilities. Specifically, HHS proposes to define the term ''facility'' for purposes of 45 CFR part 150 to mean a health care facility, an emergency department of a hospital, and an independent freestanding emergency department, as those terms are defined in 45 CFR 149.30, and any other facility subject to the requirements in Part E of Title XXVII of the PHS Act. HHS also proposes to define the term ''provider'' for purposes of 45 CFR part 150 to mean a physician or other health care provider, as that term is defined in 45 CFR 149.30, as well as a provider of air ambulance services, as that term is defined in 45 CFR 149.30. These combined definitions would make 45 CFR part 150 easier to read and understand, as the enforcement procedures outlined in 45 CFR part 150 apply to all the aforementioned parties separately defined in 45 CFR 149.30. HHS also proposes to make conforming amendments to add references to 45 CFR part 149 to the definition of ''individual health insurance policy or individual policy'' and the definition of ''PHS Act requirements.'' HHS seeks comment on these proposals.

3. State Enforcement (45 CFR 150.201)

Under 45 CFR 150.201, states have primary enforcement authority over health insurance issuers with respect to PHS Act requirements, unless the state notifies CMS that it has not enacted legislation to enforce or that it is not otherwise enforcing PHS Act requirements or the state fails to substantially enforce the PHS Act requirements that apply to issuers, in which case CMS would enforce those requirements. These proposed rules would make a conforming amendment at 45 CFR 150.201 to specify that states also have primary enforcement authority over providers and facilities that furnishes items or services to individuals in the state, unless the state notifies CMS that it has not enacted legislation to enforce or that it is not otherwise enforcing PHS Act requirements or the state fails to substantially enforce the PHS Act requirements that apply to providers and facilities, in which case CMS would enforce these requirements. Under this proposed rule, a state would be the primary enforcer of the PHS Act requirements against providers or facilities that furnish services via telehealth to individuals located in the state, even in circumstances where the provider or facility is located in a different state. While many states require licensure of out-of-state telehealth providers furnishing care to individuals within the state, HHS understands that this is not always true, and that many states have relaxed licensure requirements in response to

[28] *See* section 2723(b) of the PHS Act. *Also see* 45 CFR 150.301 through 150.347.

the COVID–19 public health emergency.[29] HHS seeks comment on whether the approach taken in this proposed rule presents challenges with respect to providers or facilities furnishing telehealth services.

HHS also proposes to make a technical correction to the title of subpart B to reflect that this subpart would apply to multiple PHS Act requirements rather than only one requirement. HHS proposes to revise the title of subpart B by changing ''requirement'' to ''requirements'' as the term should have been plural.

4. Circumstances Requiring CMS Enforcement (45 CFR 150.203)

HHS proposes to make technical corrections to the introductory language at 45 CFR 150.203 to reflect that this section would apply to multiple PHS Act requirements rather than only one requirement. HHS is not proposing further amendments because HHS would interpret and apply the current language outlining the circumstances requiring CMS enforcement, which generally refers to states, to situations involving providers and facilities in the same manner in which it applies to health insurance issuers in situations where the applicable state authority fails to substantially enforce applicable PHS Act requirements.

5. Sources of Information Triggering an Investigation of State Enforcement (45 CFR 150.205)

Section 150.205(d) provides that if information regarding the status of state enforcement of PHS Act requirements comes from state governors and commissioners of insurance, such information may trigger a CMS investigation of whether a state is failing to substantially enforce these requirements. Because governors, commissioners, and other applicable state insurance agency or entity leaders may not have oversight or enforcement authority over providers and facilities, information regarding state enforcement of PHS Act requirements with respect to providers and facilities may instead come from the state departments of health or other state agencies with that authority. Additionally, some states have officials distinct from the commissioners of insurance who are responsible for regulating health maintenance organizations (HMOs). Therefore, HHS proposes to amend 45 CFR 150.205(d) to add a reference to officials responsible for regulating HMOs, directors of public health or any other state department, agency, or board with applicable oversight authority over entities subject to PHS Act requirements to the list of state officials who may be the source of information triggering an investigation. Proposed amendments to 45 CFR 150.205(e)(2) would correct a typographical error which incorrectly referenced in 45 CFR 148.120 instead of 45 CFR 148.210.

6. Notice to the State (45 CFR 150.211)

Under these proposed rules, in determining whether a state is failing to substantially enforce PHS Act requirements that apply to providers and facilities, CMS would use the processes and standards already established with respect to state enforcement of applicable PHS Act requirements with respect to health insurance issuers in 45 CFR 150.205 through 150.221. CMS is of the view that these processes can largely also apply to state enforcement of the new PHS Act requirements applicable to providers and facilities without change. However, the current regulatory language at 45 CFR 150.211 specifies that if there is a reasonable question regarding state enforcement, CMS will send a notice to the governor or chief executive officer of the state, the insurance commissioner or chief insurance regulatory official, or the official responsible for regulating HMOs. Those individuals may not be the appropriate recipients if there is a reasonable question regarding state enforcement of PHS Act requirements that apply to providers or facilities. Therefore, HHS proposes to amend 45 CFR 150.211 to add paragraph (d) specifying that a notice of possible failure to substantially enforce PHS Act requirements in such circumstances would be sent to the relevant state official responsible for regulating providers and facilities and to make conforming changes to paragraph (b) to reflect that notices would be sent to the insurance commissioner or chief insurance regulatory official when there is a reasonable question regarding state enforcement of PHS Act requirements that apply to health insurance issuers. Paragraph (c) would be retained, which provides that such notices would be sent to the state official responsible for regulating HMOs, if different from the official listed in paragraph (b), when the alleged failure involves HMOs.

7. Transition to State Enforcement (45 CFR 150.221)

HHS proposes to make conforming amendments to 45 CFR 150.221(a)(2) to provide that the discussions between CMS and state officials regarding transition to state enforcement would include instructions to providers and facilities, rather than instructions only to issuers. HHS also proposes to amend 45 CFR 150.221(b) to similarly add references to providers and facilities to make clear that CMS may also negotiate a process to ensure that, to the extent practicable, and as permitted by law, its records documenting compliance and other relevant areas of CMS's enforcement operations are made available for incorporation into the records of the applicable state authority responsible for oversight and enforcement of providers and facilities. These proposed changes would capture a reference to the new PHS Act requirements enacted in the CAA applicable to providers and facilities to ensure the regulation includes situations where a transition back to state enforcement of applicable Federal requirements over such entities is appropriate. HHS also proposes to replace the language about making CMS enforcement records available to states by removing the language about ''incorporation into the records'' of the State regulatory authority that would assume enforcement to more generally refer to making such records available to the State regulatory authority.

8. Basis for Initiating an Investigation (45 CFR 150.303)

Currently, 45 CFR 150.303 provides that if CMS receives information that an issuer or non-Federal governmental plan may be failing to meet a PHS Act requirement, then an investigation may be warranted. HHS proposes to revise 45 CFR 150.303(a) to specify that CMS may undertake either an investigation or a market conduct examination, rather than only an investigation, within its discretion based on this information. This proposed revision would align 45 CFR 150.303(a) with the regulatory text in 45 CFR 150.313(b), which provides that CMS may initiate a market conduct examination when, based on the information described in 45 CFR 150.303, it finds evidence that a specific entity may be in violation of the PHS Act.

When determining whether to undertake an investigation or examination, CMS would consider a number of different factors, including the facts and circumstances surrounding the potential violation, the potential

[29] *See,* for example, Center for Connected Health Policy. *Cross-State Licensing.* Available at: *https://www.cchpca.org/topic/cross-state-licensing-professional-requirements/* (last accessed August 8, 2021); and Federation of State Medical Boards. *U.S. States and Territories Modifying Requirements for Telehealth in Response to COVID–19.* (July 28, 2021.) Available at: *https://www.fsmb.org/siteassets/advocacy/pdf/states-waiving-licensure-requirements-for-telehealth-in-response-to-covid-19.pdf.*

number of impacted consumers, an issuer or non-Federal governmental plan's past history of substantiated complaints, the effect of the alleged violation on a consumer, the deterrent effect that knowledge of the investigation or examination may have on others who may consider committing similar violations, and other considerations that CMS deems appropriate.

HHS further proposes to revise 45 CFR 150.303(a) to add a new sentence to clarify that CMS may review any information it deems useful to determine if a violation of the PHS Act has occurred when undertaking an investigation or examination. HHS proposes this change to more clearly describe current CMS procedures, which may include a review of applicable data and documentation, such as paid and denied claims, summary plan documents, summary of benefits and coverage, and notifications to enrollees, to assess whether the entity may be in violation of the PHS Act. Additionally, HHS proposes a conforming amendment to paragraph (a)(2) to capture a reference to reports from providers and facilities—along with reports from state insurance departments, the NAIC and other Federal and state agencies—as potential sources or types of information that could lead to an investigation or examination to ensure compliance with the applicable PHS Act requirements.

HHS proposes to remove and replace 45 CFR 150.303(c), which currently states that a complaint may be directed to any CMS regional office. HHS proposes this change because the CMS regional offices no longer process complaints. Instead, CMS offers several methods for entities or individuals to submit complaints. These methods vary based on the type of coverage or plan in which an individual is enrolled and the substance of the complaint, and are described on CMS's public web pages. For PHS Act complaints regarding non-Federal governmental plans, consumers can email *PHIG@cms.hhs.gov.* For complaints with respect to issuers, consumers in states that are directly enforcing the applicable PHS Act provision are referred to the state department of insurance; for states in which CMS is directly enforcing PHS Act requirements, consumers can email *MarketConduct@cms.hhs.gov.* The list of current states in which CMS is directly enforcing one or more PHS Act provisions is available on the CMS website at *https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/compliance.*

HHS proposes to remove the complaint provision that is currently in 45 CFR 150.303(c), and replace it with a new provision specifying that CMS may conduct random or targeted investigations and market conduct examinations of issuers and non-Federal governmental plans to ensure compliance with the PHS Act. HHS is proposing this regulation to codify another enforcement tool for CMS for situations where it is responsible for enforcement of the Federal market reform provisions. The proposal is also intended to codify in regulation the new statutory obligations established under the CAA for HHS to conduct certain specified audits and reviews. More specifically, section 2799A–1(a)(2)(A)(ii) of the PHS Act directs HHS to conduct audits of a sample of claims data with respect to a year (beginning with 2022) from not more than 25 group health plans and health insurance issuers offering group or individual health insurance coverage to verify compliance with the qualifying payment amount requirements described in section 2799A–1 of the PHS Act, as enacted by the No Surprises Act. HHS expects states with primary enforcement authority with respect to section 2799A–1 of the PHS Act will carry out enforcement activities to verify compliance with the qualifying payment amount requirements in section 2799A–1 of the PHS Act and 45 CFR 149.140 to the extent that the qualifying payment amount is used to determine the ''recognized amount'' for purposes of calculating cost sharing under section 2799A–1. As noted in 45 CFR 149.140(f), HHS intends to carry out these statutory provisions in states in which CMS is directly enforcing using the market conduct examination procedures described in 45 CFR 150.313, as proposed to be amended, when conducting random and targeted audits for compliance with the requirements for applying a qualifying payment amount.[30] Additionally, section 203 of Title II of Division BB of the CAA amended section 2726(a) of the PHS Act to expressly require group health plans and health insurance issuers offering group or individual health insurance coverage [31] that provide both medical/surgical (M/S) benefits and mental health or substance use disorder (MH/SUD) benefits and that impose nonquantitative treatment limitations (NQTLs) on MH/SUD benefits to perform, document, and make available upon request to HHS (or the applicable state authority) comparative analyses of the design and application of their NQTLs. PHS Act section 2726(a)(8)(B), as added by section 203 of Title II of Division BB of the CAA further directs HHS to request, review, and report to Congress its findings regarding NQTL comparative analyses from group health plans and health insurance issuers each year. In order to satisfy the newly codified statutory obligations for HHS to conduct these specified audits and reviews under the CAA, CMS currently intends to focus random or targeted investigations under the new proposed 45 CFR 150.303(c) on ensuring compliance with (i) qualifying payment amount requirements described in section 2799A–1 of the PHS Act, which was added by the No Surprises Act, and (ii) the NQTL comparative analysis requirements described in section 2726(a)(8) of the PHS Act. CMS is committed to robust enforcement of these new requirements and ensuring compliance with other applicable PHS Act provisions. HHS is of the view that this is a necessary and appropriate exercise of its enforcement and rulemaking authorities under sections 2723 and 2792 of the PHS Act, respectively. Further, HHS is of the view that having authority to conduct random or targeted investigations or examinations for all PHS Act provisions, including but not limited to qualifying payment amount requirements described in section 2799A–1 of the PHS Act, which was added by the No Surprises Act and codified in regulations at 45 CFR 149.140, and the NQTL comparative analysis requirements described in section 2726(a)(8) of the PHS Act, would create a more efficient and effective enforcement program in that CMS would be able to proactively ensure consumers are receiving the benefits to which they are entitled rather than having to wait to receive a complaint or other information indicating a potential PHS Act violation in situations where CMS is responsible for enforcement. For example, an investigation or examination by CMS of one responsible entity may identify a potential systematic error or issue that the agency suspects may impact similarly situated entities subject to CMS's enforcement authority. These proposed rules would provide CMS

[30] 86 FR 36899 and 36979 (July 13, 2021).

[31] Pursuant to section 2723(b)(1) of the PHS Act, CMS enforces section 2726 of the PHS Act and other applicable provisions of Title XXVII of the PHS Act with respect to non-Federal governmental group health plans in all states and with respect to health insurance issuers selling products in the individual and fully insured group markets in states that elect not to enforce or fail to substantially enforce section 2726 of the PHS Act and other applicable provisions of Title XXVII of the PHS Act.

with another enforcement tool to investigate whether these other entities have experienced the same error or issue without having to wait to receive a complaint or other information indicating a PHS Act violation to take action.

HHS also proposes a conforming amendment to the title for this section to also capture a reference to examinations and to remove the reference to a potential violation. This would align with the proposed amendments to 45 CFR 150.303, as outlined in this section of the preamble, to allow CMS to randomly select non-Federal governmental plans and issuers for investigation and market conduct examination to ensure compliance with applicable PHS Act requirements when CMS is responsible for enforcement, as well as the other amendments to 45 CFR 150.303 to specify that CMS may also undertake an examination based on information the agency receives that an issuer or non-Federal governmental plan may be failing to meet a PHS Act requirement.

HHS seeks comment on these proposed changes.

9. Notice to Responsible Entities (45 CFR 150.307)

HHS proposes to revise several provisions in 45 CFR 150.307 regarding the notice that is sent to responsible entities when there is a potential violation, to reflect and clarify the current CMS enforcement procedures. The proposed revisions are further intended to provide responsible entities additional information and clarity regarding CMS's authority and process for conducting investigations.[32] Specifically, HHS proposes to replace the word ''investigation'' with ''information'' in the introductory text to align this section with the regulatory text in 45 CFR 150.303, which generally addresses information that may warrant an investigation or an examination. HHS is also proposing to revise the introductory text to clarify that the notice would also be sent to initiate investigations of randomly selected non-Federal governmental plans and issuers under new proposed 45 CFR 150.303(c). The proposed revision to the introductory text also provides that CMS would also send this notice to the responsible entity or entities in situations where information received under 45 CFR 150.303(a) indicates a potential violation. HHS is also proposing to remove the provision in 45 CFR 150.307(a), which currently states that the notice describes the substance of the complaint or other information received, and to replace it with a new provision specifying that the notice describes the information received under 45 CFR 150.303 that gives rise to the investigation or notifies the responsible entity that it was selected by CMS for a random investigation under 45 CFR 150.303(c). HHS is proposing this change to clarify that CMS does not provide personally identifiable information (PII) or PHI via a complaint without the complainant's express consent. HHS also would not disclose confidential or other sensitive information protected from disclosure that may be included in the complaint. However, the notice would include other information sufficient to explain the potential violation(s) and provide the responsible entity an adequate opportunity to respond to the allegation(s), or to notify the responsible entity of its selection for, and the PHS Act provision(s) that are the focus of, a random investigation under new proposed 45 CFR 150.303(c).

Consistent with current text at 45 CFR 150.307(b), CMS generally contacts the responsible entity once it reviews the information received under 45 CFR 150.303 and provides the responsible entity 30 days to respond with additional information, including documentation of compliance as described in 45 CFR 150.311. CMS also directs the responsible entity to submit any data or documentation that CMS identifies as relevant and may use to assess whether the responsible entity is violating applicable PHS Act provisions. However, there are circumstances in which CMS has determined it is not appropriate to provide the responsible entity 30 days to respond. Such circumstances include complaints involving urgent medical issues, allegations of fraud or abuse, and when CMS must complete the investigation within a specified time frame under the statute. Accordingly, CMS proposes to revise 45 CFR 150.307(b) to clarify that the notice provided under this section would direct the responsible entity to provide any documentation that CMS identifies as relevant to the investigation, in addition to other documentation, such as documentation of compliance as described in 45 CFR 150.311, that in the responsible entity's view would aid CMS in evaluating the allegations and the entity's compliance with the PHS Act requirements identified in the notice. HHS further proposes to revise 45 CFR 150.307(b) such that CMS would provide the date by which the responsible entity must respond to the notice; the goal is to ensure the efficient administration of investigations. CMS anticipates generally providing 14 days for response. In circumstances that warrant a more rapid response, CMS anticipates providing at least 24 hours for response. In circumstances that warrant additional time, such when CMS requests large amounts of data, CMS anticipates providing more than 14 days for response. HHS is not proposing any amendments to 45 CFR 150.307(c) and therefore would retain the requirement that the notice also inform the responsible entity that a civil money penalty may be assessed. Lastly, under the new proposed 45 CFR 150.307(d), the notice would also inform responsible entities that CMS may require the responsible entity to take certain corrective actions as necessary to bring it into compliance with the applicable PHS Act requirements. HHS believes it is necessary and appropriate to highlight, as part of this notice, that corrective actions may be required because, similar to the potential for a civil money penalty to be assessed, this is another potential outcome of an investigation.

HHS seeks comment on these proposed changes.

10. Request for Extension (45 CFR 150.309)

HHS is proposing conforming amendments to revise 45 CFR 150.309 by removing the references to 30 days and clarifying that a responsible entity may request an extension when it cannot prepare a response or provide the requested information to CMS by the deadline provided in the notice under 45 CFR 150.307, and that failure to respond by the initial deadline provided in the notice or an extended deadline granted by CMS may result in CMS's imposition of a civil money penalty based upon the complaint or other information alleging or indicating a violation of PHS Act requirements. To align with proposed amendments to 45 CFR 150.313, HHS proposes to codify examples of what CMS would consider good cause, which include but are not limited to situations when a responsible entity indicates it has limited staffing resources to prepare a response, or when a responsible entity requests clarification from CMS regarding its request for information.

11. Responses to Allegations of Noncompliance (45 CFR 150.311)

HHS proposes a conforming revision at 45 CFR 150.311(e) to add a reference

[32] HHS is not proposing to incorporate a reference to market conduct examinations in 45 CFR 150.307 due to the separate regulation, 45 CFR 150.313, that addresses and details CMS's authority and processes for conducting such examinations.

to the proposed notice to initiate a market conduct examination under new proposed 45 CFR 150.313(e), which is described in section III.C.12 of the preamble.

12. Market Conduct Examinations (45 CFR 150.313)

The proposed revisions to 45 CFR 150.313 would bring this rule in line with standard industry practices adopted by the NAIC, which CMS generally follows, and would also codify additional CMS procedures for market conduct examinations. HHS also proposes several amendments to reorganize the order and presentation of information in this regulation to improve clarity.

First, HHS proposes to remove the last sentence in 45 CFR 150.313(b) as the proposed adoption of 45 CFR 150.313(f), which would outline the requirements for responsible entities to provide the requested documentation to CMS, make this sentence unnecessary. HHS further proposes to revise 45 CFR 150.313(b) to clarify that CMS may initiate a market conduct examination of a randomly selected non-Federal governmental plan or issuer subject to CMS's enforcement authority. This change would align with the proposed revision at 45 CFR 150.303(c).

Second, HHS proposes to revise 45 CFR 150.313(c) to clarify that CMS would appoint examiners when CMS initiates a random market conduct examination. Conforming amendments are also proposed to the opening clause of 45 CFR 150.313(c) to replace the current reference to ''investigation'' with ''further review'' to more clearly distinguish the authority to initiate a market conduct examination from the authority to conduct an investigation.

HHS additionally proposes to redesignate 45 CFR 150.313(e)(1) and (2) as 45 CFR 150.313(h)(1) and (2) and also proposes to replace the title of the newly designated section to clarify that it pertains to a draft market conduct examination report. HHS also proposes to revise 45 CFR 150.313(e)(1), proposed to be redesignated at 45 CFR 150.313(h)(1), to remove the description of CMS review of the draft report and replace it with a general statement indicating that upon completion of the examination, CMS would compose and provide a draft report to the responsible entity. HHS further proposes to include in redesignated 45 CFR 150.313(h)(1) a description of the contents of the draft report. Under current CMS market conduct examination practices and as reflected in the second sentence in proposed 45 CFR 150.313(h)(1), the draft report would include the scope of the examination, any findings of a PHS Act violation, and any proposed actions the entity would need to take to correct such violation. The entity then has an opportunity to respond to the draft report and either concur with the draft report findings or disagree. As reflected in proposed 45 CFR 150.313(h)(2)(i), if the responsible entity agrees with one or more of the findings in the draft report, the entity can inform CMS of any corrective action planned or already undertaken. If the entity disagrees with one or more of the findings, then the entity may provide evidence to CMS to support its disagreement. This is included in proposed 45 CFR 150.313(h)(2)(ii).

HHS further proposes to redesignate 45 CFR 150.313(e)(3), which currently addresses CMS's reply to a response to the market conduct examination report from the responsible entity, as a new 45 CFR 150.313(i) and revise it so it instead pertains to the final market conduct examination report. In the new proposed introductory sentence, HHS proposes that upon receipt of a response from the responsible entity under new paragraph (h)(2), CMS would provide a final examination report containing the agency's findings relevant to each examination issue, including the agency's reply to the responsible entity's responses to the findings in the draft report for each examination issue. HHS also proposes to replace the current references to issuer or non-Federal governmental plan with references to responsible entity in the redesignated 45 CFR 150.313(i)(1) through (4), currently codified at 45 CFR 150.313(e)(3)(i) through (iv), for consistency in terminology. HHS also proposes to clarify CMS's review and response to the responsible entity's corrective actions, if applicable, in 45 CFR 150.313(i)(3) and (4). Under current CMS market conduct examination practices and the proposed 45 CFR 150.313(i), this report finalizes the draft report and includes the entity's concurrence or disagreement with each cited PHS Act violation, and CMS's responses thereto. As detailed in 45 CFR 150.313(i)(1) through (5), CMS's reply would consist of one or more of the following: (1) Concurrence with the responsible entity's position; (2) disagreement with the responsible entity's position; (3) a determination that the corrective actions implemented by the responsible entity sufficiently addressed the identified PHS Act violation; (4) a determination that the corrective actions implemented by the responsible entity have not sufficiently addressed the identified PHS Act violation, and information on any further corrective actions deemed necessary by CMS; or (5) a notice to the responsible entity that has disagreed with a CMS finding and that has not undertaken corrective actions that there exists a violation of applicable PHS Act requirements and any actions the responsible entity must take to correct such violation. These changes are designed to align HHS regulations with industry standards for market conduct examinations. These industry standards, promulgated by NAIC, are used throughout the country by states and issuers and are generally followed by CMS. The adoption in regulation of the standard industry practices and procedures would bring uniformity to the framework CMS and the various states use to undertake market conduct examinations.

HHS proposes to add new text at 45 CFR 150.313(e) to provide that CMS would initiate a market conduct examination by providing written notice to the responsible entity and to describe the substance of the examination notice call letter CMS would send to an entity to initiate a market conduct examination. HHS proposes that this would be a written notice from CMS to the responsible entity and that it would include the following information: (1) A description of the information received under 45 CFR 150.303(a) that served as the basis for CMS's determination that a market conduct examination was warranted or notification that the entity was selected by CMS for a market conduct examination under 45 CFR 150.303(c); (2) a description of the scope of the examination; (3) the identification of the examiners; (4) a statement that a civil money penalty may be assessed; and (5) a statement that CMS may require a plan of corrective action. HHS is of the view that this set of core information, which is intended to mirror the information provided in the notice to responsible entities under 45 CFR 150.307 when CMS initiates an investigation, is the appropriate vehicle to commence a market conduct examination and is standard industry practice.

HHS also proposes to add 45 CFR 150.313(f) to generally describe the documentation collection and the initial directive for the responsible entity to submit the information that CMS identifies as relevant for the examination, the time frame for the entity's response, and to specify the penalties for failing to respond timely, which may include civil money penalties. This initial directive would provide the deadline by which responsible entities must forward the

requested documentation or request an extension. Any extension request would be required to be submitted in writing, detail the reasons for the extension request and show good cause. CMS would consider the following circumstances a non-exhaustive list of examples of good cause: (i) Limited staffing resources to prepare a response, or (ii) when a responsible entity requests clarification from CMS regarding its request for information. If CMS grants the extension, the responsible entity would be required to respond to the documentation request within the time frame specified in CMS's letter granting the extension request. The new proposed language in 45 CFR 150.313(f) also specifies that if the responsible entity fails to respond within the initial deadline provided or within the extended time frame (if granted by CMS), then CMS may impose a civil money penalty based on the information provided in the complaint or other information alleging or indicating a violation of PHS Act requirements. New proposed 45 CFR 150.313(f) would also capture the opportunity for the responsible entity to provide additional information, including documentation of compliance as described in 45 CFR 150.311, that the responsible entity believes would aid CMS in conducting the examination.

HHS also proposes to add 45 CFR 150.313(g) to describe the fieldwork CMS undertakes during a market conduct examination. Under current CMS practices and as reflected in new proposed 45 CFR 150.313(g), during the course of the examination, CMS may request additional information or documentation to support the review of the entity's data or other documents to assess the responsible entity's compliance with applicable PHS Act requirements. The request for additional information or documentation would specify the time frame allotted for the responsible entity to respond and forward the requested materials. Similar to the proposed initial documentation requests, HHS proposes to capture a similar framework that permits responsible entities to make a written request for an extension from CMS detailing the reason(s) for the request and showing good cause. Examples of what CMS would consider good cause include, but are not limited to, when a responsible entity indicates it has limited staffing resources to prepare a response, or when a responsible entity requests clarification from CMS regarding its request for information. If CMS grants the extension, the responsible entity would be required to respond to the documentation request within the time frame specified in CMS's letter granting the extension request. As detailed in the new proposed 45 CFR 150.313(g), the failure to respond and provide such additional requested documentation within the initial time frame, or within the extended time frame (if granted by CMS), may result in CMS's imposition of a civil money penalty based upon the complaint or other information when there is sufficient evidence indicating a violation of applicable PHS Act requirements. This new proposed rule also states that, during the examination, CMS may identify and notify the responsible entity of any potential PHS Act violations and, in such circumstances, would provide the entity an opportunity to respond and submit evidence of its compliance or other documentation the responsible entity believes would aid CMS in conducting the examination.

HHS seeks comment on these proposed changes.

13. Determining the Amount of the Penalty—Mitigating Circumstances (45 CFR 150.319)

HHS proposes to make a conforming edit to 45 CFR 150.319 to add reference to the notice to initiate a market conduct examination under the new proposed 45 CFR 150.313(e).

14. Determining the Amount of Penalty—Aggravating Circumstances (45 CFR 150.321)

HHS proposes to amend 45 CFR 150.321 to add a new paragraph (d), which would specify that an entity's failure to cooperate with an investigation or market conduct examination would be considered an aggravating circumstance for purposes of determining the aggregate amount of a penalty. HHS is proposing this additional aggravating circumstance based on CMS's experience conducting examinations and investigations. More specifically, HHS has experienced situations where responsible entities fail to respond to requests for information in a timely fashion or otherwise generally fail to cooperate in a CMS enforcement action. For example, in one market conduct examination, an issuer failed to respond to CMS's requests for information for 6 months thereby causing significant delay to the examination. HHS is of the view that it is appropriate and necessary to add this additional aggravating circumstance to provide CMS a vehicle to increase the amount of a civil money penalty (up to but not in excess of the statutory maximum) in situations when the responsible entity fails to cooperate with a CMS investigation or market conduct examination and there is sufficient evidence indicating a violation of an applicable PHS Act requirement to discourage these behaviors.

HHS seeks comment on this proposed change.

15. Settlement Authority (45 CFR 150.325)

HHS proposes to make a conforming edit to 45 CFR 150.325 to add reference to the notice to initiate a market conduct examination under the new proposed 45 CFR 150.313(e).

16. Definitions (45 CFR 150.401)

HHS proposes to make a conforming amendment to the definition of respondent to add a reference to a notice of proposed determination of a civil money penalty issued under the proposed new 45 CFR 150.515. This proposed amendment would provide for the same process for administrative hearings regarding civil money penalties assessed against providers and facilities as the process established for non-Federal governmental plans and issuers in states where CMS directly enforces PHS Act requirements.

17. Filing of Request for Hearing (45 CFR 150.405)

HHS proposes to make a conforming edit to 45 CFR 150.405(a) to add reference to a notice of proposed determination of a civil money penalty issued under the new proposed 45 CFR 150.515. This would provide providers and facilities 30 days from the date of such notice to request a hearing with an administrative law judge to appeal the proposed determination. This would align with the existing time frame provided to non-Federal governmental plans and issuers for such appeals in states where CMS directly enforces PHS Act requirements.

18. Issues To Be Heard and Decided by ALJ (45 CFR 150.417)

HHS proposes to make a conforming amendment to add a reference to proposed 45 CFR 150.513 for factors an Administrative Law Judge (ALJ) can apply to determine the reasonableness of a civil money penalty. This proposed amendment would provide for the same process for administrative hearings regarding civil money penalties assessed against providers and facilities as the process established for non-Federal governmental plans, and issuers in states where CMS directly enforces PHS Act requirements.

19. Evidence (45 CFR 150.445)

HHS proposes to make conforming amendments to 45 CFR 150.445(g), which pertains to admissibility of evidence of acts other than those at issue in the instant case, to add references to the proposed 45 CFR 150.513 (which describes factors and mitigating and aggravating circumstances considered in determination of the amount of civil money penalty assessed against a provider or facility), and proposed 45 CFR 150.505 and 150.515 (which describe notices sent by CMS to responsible entities regarding potential violations and civil money penalties against a provider or facility). HHS proposes to make a similar conforming amendment to 45 CFR 150.445(j), which pertains to admissibility of evidence of willingness and ability to enter into and complete a corrective action plan, to add a reference to proposed 45 CFR 150.505. These proposed amendments would provide for the same process for administrative hearings regarding civil money penalties assessed against providers and facilities as the process established for non-Federal governmental plans, and issuers in states where CMS directly enforces PHS Act requirements. In addition, HHS proposes to amend 45 CFR 150.445(h) to provide for cross-examination of witnesses, to conform to (i) the right to cross-examination already implicit in 45 CFR 150.419, and (ii) section 1128A(c)(2) of the SSA, as required in section 2799B–4 of the PHS Act. The right to cross-examine witnesses is fundamental and is being explicitly included here to ensure that the process for hearings is fair for all parties.

20. Sanctions (45 CFR 150.455)

HHS proposes to amend 45 CFR 150.455 to add the payment of an aggrieved party's attorneys' fees and other costs as an additional sanction for violations of 45 CFR part 149, to conform to section 1128A(c)(4) of the SSA. Section 2799B–4 of the PHS Act subjects civil money penalties assessed under that section to the requirements in section 1128A(c) of the SSA (with the exception of the first sentence of section 1128A(c)(1)). Section 1128A(c)(4) of the SSA provides that an ALJ may sanction parties and attorneys for ''failing to comply with an order or procedure, failing to defend an action, or other misconduct as would interfere with the speedy, orderly, or fair conduct of the hearing.'' Subsection (g) thereof specifically provides for ordering the party or attorney to pay attorneys' fees and other costs caused by the failure or misconduct.

D. 45 CFR Part 150, Subpart E—CMS Enforcement With Respect to Providers and Facilities

HHS proposes to add a new subpart E to 45 CFR part 150, to implement the requirements of section 2799B–4 of the PHS Act. This new subpart would specify the CMS enforcement processes with respect to the requirements of Part E of Title XXVII of the PHS Act (and its implementing regulations at 45 CFR part 149) that would be applicable to providers and facilities subject to CMS's enforcement authority. With respect to potential violations of these requirements, HHS proposes to follow a similar investigatory process to that which currently exists in subpart C of 45 CFR part 150, which applies to investigations of possible violations by plans and issuers. HHS is proposing to use that similar process to maximize efficiency. HHS believes that the general steps of reviewing complaints or other indications of a potential PHS Act violation, notifying responsible parties of the investigation and directing them to provide information and documentation for CMS to review and assess compliance, and directing the responsible party to take corrective actions to remedy any violations identified are prudent and appropriate to apply to investigations of providers and facilities. HHS believes that this proposed approach would allow CMS to effectively enforce the new requirements and ensure that providers and facilities are sufficiently informed of the steps in and how to comply with the investigation process.

In contrast, HHS is proposing a different civil money penalty process to comply with the statutory requirements of the No Surprises Act. Section 2799B–4 of the PHS Act delineates the process for imposition of civil money penalties if a provider or facility is found to be in violation of Part E of Title XXVII of the PHS Act. Section 106(e) of the No Surprises Act sets forth the process for imposition of civil money penalties if a provider of air ambulance services fails to provide data required in section 106(a) of the No Surprises Act. In both cases, the process must follow section 1128A of the SSA.[33] Therefore, although many of the investigative processes applicable to providers and facilities are the same as those applicable to plans and issuers, HHS proposes to codify the provider and facility enforcement procedures in new subpart E to 45 CFR part 150.

21. General Rule Regarding the Imposition of Civil Money Penalties (45 CFR 150.501)

Section 2799B–4 of the PHS Act authorizes HHS to apply a civil money penalty with respect to a provider or facility that is found to be in violation of Part E of Title XXVII of the PHS Act. Section 106(e) of the No Surprises Act authorizes HHS to apply a civil money penalty with respect to a provider of air ambulance services that fails to submit all information required under section 106(a) of the No Surprises Act by the required date. HHS proposes to codify those provisions in 45 CFR 150.501.

22. Basis for Initiating an Investigation; Injunctive Relief (45 CFR 150.503)

HHS proposes that CMS may conduct an investigation based on any information that indicates a provider or facility is failing to comply with PHS Act requirements. Proposed 45 CFR 150.503(a) would list the same sources of information as those that CMS may consider when investigating potential violations by plans or issuers, including complaints (such as complaints received under the process established in 45 CFR 149.150 with respect to plans and issuers or 45 CFR149.450 with respect to providers and facilities), reports from state insurance departments, the NAIC, other Federal and state agencies, and any other information that indicates potential noncompliance with PHS Act requirements. HHS proposes to add state health and medical boards as additional sources in 45 CFR 150.503(a), as they may be relevant sources to indicate potential noncompliance by providers and facilities.

HHS proposes language in 45 CFR 150.503(b) that would clarify who may file a complaint. This would include any entity or individual, or any entity or personal representative acting on that individual's behalf, who believes that a right to which the aggrieved person is entitled under PHS Act requirements is being, or has been, denied or abridged as a result of any action or failure to act on the part of a provider or facility. This would ensure consistency with 45 CFR 150.303(b) which provides that such individuals or entities may submit a complaint with respect to non-Federal governmental plans and issuers.

HHS proposes in 45 CFR 150.503(c) to establish CMS's authority to conduct

[33] The applicability of section 1128A of the SSA varies depending on the applicable enforcement provision. For violations stemming from Section 2799B–4 of the PHS Act, provisions of subsections (c) (with the exception of the first sentence of paragraph (1) of such subsection), (d), (e), (g), (h), (k), and (l) apply. For violations stemming from Section 106 of the No Surprises Act, all provisions other than subsections (a) and (b) and the first sentence of subsection (c)(1) apply.

random or targeted investigations of providers and facilities. This would allow CMS to proactively identify and address issues of non-compliance, and it would generally align CMS's enforcement procedures with respect to providers and facilities with those applicable to non-Federal governmental plans and issuers under newly proposed 45 CFR 150.303(c), but would exclude any reference to market conduct examinations, as these are typically used in connection with group health plans and health insurance issuers, and not with providers.

HHS proposes to codify in 45 CFR 150.503(d) the statutory language, located at section 1128A(k) of the SSA and included via section 2799B–4 of the PHS Act, that allows HHS to bring an action to prevent a provider or facility from engaging in activity that would make the provider or facility subject to a civil money penalty. HHS also proposes that CMS may bring an action to prevent a provider or facility from concealing, removing, encumbering, or disposing of assets that may be required in order to pay any civil money penalty that might be imposed or to seek other appropriate relief.

23. Notice to Responsible Entities (45 CFR 150.505)

HHS proposes to specify in 45 CFR 150.505 that if CMS receives information that indicates a possible violation, or selects a provider or facility for investigation, or fails to receive data required in 45 CFR 149.460, CMS would provide a written notice to the provider or facility. The notice would describe the information that prompted the investigation or notify the provider or facility that it was selected for investigation. The notice would also state that a civil money penalty may be assessed, and that CMS may require a plan of corrective action. The notice would provide the date by which the provider or facility must respond with additional information, including documentation of compliance. In the case of a provider of air ambulance services, this could include a date by which the provider of air ambulance services would be required to submit any missing information from the report required under 45 CFR 149.460. HHS anticipates that CMS would generally provide 14 days for providers and facilities to respond to the notice with the requested documentation. This would provide sufficient time for a recipient to investigate the substance of an allegation and respond to CMS. HHS anticipates that the documentation or information necessary to respond to most complaints should be readily available to a provider (for example, in the form of computerized patient billing records, etc.). A 14-day window for response should provide sufficient time to gather this documentation and formulate a response. In circumstances that warrant a more rapid response, such as complaints involving urgent medical issues or allegations of fraud and abuse, CMS may shorten the time frame for the provider or facility to provide the requested documentation but does not anticipate requesting responses within less than 24 hours.

24. Request for Extension (45 CFR 150.507)

HHS proposes to provide in 45 CFR 150.507 that if a provider or facility received a notice of possible violation from CMS, and the provider or facility could not prepare a response by the deadline provided in the notice under 45 CFR 150.505, such provider or facility may make a written request for an extension. The request must detail the reason for the extension request and must show good cause. Examples of what CMS would consider good cause include, but are not limited to, when a responsible entity indicates it has limited staffing resources to prepare a response, or when a responsible entity requests clarification from CMS regarding its request for information. If CMS grants the extension, the provider or facility would be required to respond within the specified time frame. Failure to respond within the time allotted would result in CMS initiating an action to impose a civil money penalty.

25. Responses to Notice of Potential Violations (45 CFR 150.509)

HHS proposes to provide in 45 CFR 150.509 that CMS would consider all relevant documentation provided when determining whether to impose a civil money penalty, including information from the complainant and information from the provider or facility. In responding to an allegation of noncompliance, a provider or facility may submit medical bills; notice and consent forms signed by the participant, beneficiary, or enrollee (or an authorized representative); proof of public disclosure of patient protections against balance billing; or any other evidence of compliance.

In 45 CFR 150.509(d), HHS proposes that a provider or facility may also submit to CMS any evidence documenting the development and implementation of internal policies and procedures to ensure compliance with the PHS Act and section 106(a) of the No Surprises Act, as applicable. One example would be a voluntary compliance program. A voluntary compliance program should, at a minimum: Effectively articulate and demonstrate the fundamental mission of compliance and the provider or facility's commitment to the compliance process; include the name of the individual in the organization who is responsible for compliance; include an effective monitoring system to identify practices that do not comply with PHS Act requirements or section 106(a) of the No Surprises Act, as applicable, and to provide reasonable assurance that violations are detected in a timely manner; and address procedures to improve internal policies when noncompliant practices are identified.

In 45 CFR 150.509(e), HHS proposes that a provider or facility may respond to an allegation of noncompliance by submitting evidence documenting the provider or facility's record of previous compliance with PHS Act requirements or section 106(a) of the No Surprises Act, as applicable. Examples of previous compliance would include copies of signed notice and consent forms or prominently displayed disclosures of patient protections against balance billing.

Section 106(e)(2) of the No Surprises Act provides that HHS may waive a penalty when a provider of air ambulance services submits only some of the data required in section 106(a) of the No Surprises Act if the provider of air ambulance services makes a good faith effort to submit the missing data. In 45 CFR 150.509(f), HHS proposes that such a provider can exhibit a good faith effort by submitting and implementing a corrective action plan that: (i) Identifies the cause underlying the submission of incomplete data and effectively articulates and demonstrates the measures that would be taken to submit complete data; (ii) provides the timeline for submitting complete data; (iii) provides the name of the individual in the organization responsible for overseeing corrective actions and submitting complete data; and (iv) addresses procedures to improve internal policies to ensure that incomplete data reports are identified and completed prior to submission for future reporting periods. HHS is of the view that these elements would demonstrate that a provider of air ambulance services is committed to identifying and correcting any errors that prevented it from submitting the complete set of data required. HHS seeks comment on this proposal.

26. Liability for Penalties (45 CFR 150.511)

In 45 CFR 150.511, HHS proposes to codify the provision in section 1128A(c)(1) of the SSA that provides that HHS will not commence any action to impose a civil money penalty unless such action is commenced within 6 years from the date when the violation occurred.

HHS also proposes that a principal is liable for penalties for the actions of the principal's agent acting within the scope of his or her agency, without limiting the underlying liability of the agent.

27. Amount of Penalty (45 CFR 150.513)

At 45 CFR 150.513(a)(1), HHS proposes to codify the statutory language that permits HHS to impose a civil money penalty in an amount not to exceed the sum of $10,000 per violation if a provider or facility is found to be in violation of a PHS Act requirement. At 45 CFR 150.513(a)(2), HHS proposes to codify the statutory language found in section 106(e) of the No Surprises Act that permits HHS to impose a civil money penalty in an amount not to exceed the sum of $10,000 if a provider of air ambulance services fails to submit required data. Such civil money penalties would be in addition to any other penalties prescribed or allowed by law.

HHS proposes that CMS would consider all relevant documentation provided when determining whether to impose a civil money penalty, including information from the complainant, provider (including a provider of air ambulance services), or facility. In 45 CFR 150.513(b), HHS proposes that if CMS were to determine that it would impose a civil money penalty, there are several factors that would be considered when determining the amount of such penalty. CMS would consider the nature of claims of noncompliance and the circumstances under which such claims were presented. CMS would also consider: the degree of culpability of the provider or facility against which a civil money penalty is proposed; the provider or facility's history of prior violations, including whether CMS or any state previously found the provider or facility liable for civil or administrative sanctions in connection with a violation of PHS Act requirements or section 106(a) of the No Surprises Act, as applicable; the frequency of the violation, taking into consideration whether any violation is an isolated occurrence, represents a pattern, or is widespread; and the level of financial and other impacts on affected individuals. CMS would also consider any other matters as justice may require.

In 45 CFR 150.513(c), HHS proposes that for every violation subject to a civil money penalty, if there are substantial or several mitigating circumstances, the aggregate amount of the penalty would be set at an amount sufficiently below the statutory maximum of $10,000 to reflect the mitigating circumstance. As guidelines for considering the circumstances listed earlier, CMS would consider several factors as mitigating circumstances. First, CMS would consider the provider or facility's record of prior compliance. If, for example, the provider or facility implemented and followed a compliance plan before receipt of the notice of potential noncompliance, implementing and following such compliance plan would be considered a mitigating circumstance. If the provider or facility had no previous complaints against it for noncompliance, that would also be considered a mitigating circumstance. Second, CMS would consider the gravity of the violation(s). For example, it would be considered a mitigating circumstance if the provider or facility made adjustments to its business practices to come into compliance with PHS Act requirements so that the provider or facility: (i) Identified all participants, beneficiaries, and enrollees, or all plans or issuers, that are or were wrongly billed; (ii) withdrew the bill or reimbursed the affected individuals, or plans or issuers, that were wrongly billed so that, to the extent practicable, the affected individuals, plans or issuers are in the same position that they would have been in had the violation not occurred; and (iii) completed those adjustments to its business practices in a timely manner. Finally, it would be considered a mitigating circumstance if the provider or facility demonstrated that the violation was an isolated occurrence.

HHS also proposes in 45 CFR 150.513(d) that CMS would consider certain factors to be aggravating circumstances. HHS proposes that for every violation subject to a civil money penalty, if there are substantial or several aggravating circumstances, CMS may set the aggregate amount of the penalty at an amount sufficiently close to or at the $10,000 permitted by statute to reflect that fact. If the frequency of violation indicates a pattern of widespread occurrence, that would be considered an aggravating circumstance. If the violation(s) resulted in significant financial and other impacts on the average affected individual(s), plan or issuer, that would also be considered an aggravating circumstance. Finally, if the provider or facility does not provide documentation showing that substantially all of the violations were corrected, that would be considered an aggravating circumstance.

In 45 CFR 150.513(e), HHS proposes that if certain criteria are met, CMS would waive a penalty. Section 2799B–4(b)(4) of the PHS Act provides that HHS will waive a civil money penalty if the provider or facility does not knowingly violate, and should not have reasonably known it violated, sections 2799B–1 and 2799B–2 of the PHS Act or, in the case of a provider of air ambulance services, section 2799B–5 of the PHS Act, as long as the provider or facility withdraws any erroneous bill and, if necessary, reimburses the plan or enrollee, within 30 days of the violation in an amount equal to the difference between the amount billed and the amount allowed to be billed, plus interest at a rate determined by the Secretary. HHS proposes that the interest rate be the rate established by the Treasury pursuant to 31 U.S.C. 3717. That is the rate HHS customarily uses for overpayments and underpayments.[34] The CAA also provides that HHS will waive a civil money penalty in the case of a provider of air ambulance services that submits only part of the data required in section 106(a) of the No Surprises Act, if such provider demonstrates a good faith effort in working with HHS to submit any missing information. HHS proposes to codify that waiver language in 45 CFR 150.513(e)(2).

In 45 CFR 150.513(f), HHS proposes that nothing in this proposed section limits the authority of CMS to settle any issue or case described in the notice furnished in accordance with 45 CFR 150.505 or to compromise on any penalty provided for in 45 CFR 150.515. This is consistent with the settlement authority described in 45 CFR 150.325.

HHS recognizes that there may be certain circumstances in which imposition of a civil money penalty would create a significant financial hardship for a provider or facility. Various circumstances may give rise to

[34] *See* 42 CFR 405.378 which provides that the interest rate on overpayments and underpayments is the higher of: (i) The rate as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date of final determination as defined in paragraph (c) of this section; or (ii) The current value of funds rate (this rate is published annually in the **Federal Register** by the Secretary of the Treasury, subject to quarterly revisions). *See also* 45 CFR 30.18(b)(2) which provides ''unless a different rate is prescribed by statute, contract, or a repayment agreement, the rate of interest charged shall be the rate established annually by the Secretary of the Treasury pursuant to 31 U.S.C. 3717.''

financial hardship, potentially including the financial impact of natural disasters or public health emergencies, provider disability or death, and provider solvency concerns. The No Surprises Act allows HHS to establish a hardship exemption to the civil money penalties that would otherwise be imposed for a violation of Part E of Title XXVII of the PHS Act. HHS proposes to codify the hardship exemption in 45 CFR 150.513(g). HHS seeks comments regarding this proposal, including examples of additional circumstances that may warrant a hardship exemption.

28. Notice of Proposed Determination (45 CFR 150.515)

Section 2799B–4(b)(1) of the PHS Act and section 106(e) of the No Surprises Act require HHS to apply certain subsections of section 1128A of the SSA when imposing a civil money penalty upon a provider or facility. Specifically, section 1128A(c) of the SSA provides that HHS may initiate an action for a civil money penalty by serving notice of the action in any manner authorized under Rule 4 of the Federal Rules of Civil Procedure. HHS proposes to codify that procedural requirement in 45 CFR 150.515 and specify that such written notice would include a description of the requirements that CMS believes the provider or facility has violated; a description of any complaint or other information upon which CMS based its investigation; and the amount of the proposed penalty, including any aggravating or mitigating circumstances described in 45 CFR 150.513 that were considered when determining the amount of the proposed penalty.

HHS proposes that the notice of proposed determination would also include instructions for the provider or facility to respond to the notice, including a specific statement of the provider or facility's right to a hearing and a statement that failure to request a hearing within 30 days of receipt of the notice permits the imposition of the proposed penalty without right of appeal.

29. Hearing (45 CFR 150.517)

Section 2799B–4(b)(1) of the PHS Act and section 106(e)(3) of the No Surprises Act specify that sections 1128A(c)(2) and (c)(4) of the SSA apply to any hearing for a violation of this part. Section 1128A(c)(2) of the SSA requires HHS to provide written notice and an opportunity for an adverse determination to be made on the record after a hearing at which the provider or facility is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses.

Section 1128A(c)(4) of the SSA allows the official conducting the hearing to sanction a person, including any party or attorney, for failing to comply with an order or procedure, failing to defend an action, or other misconduct that would interfere with the speedy, orderly, or fair conduct of the hearing. Any such sanctions must reasonably relate to the severity and nature of the failure or misconduct and may include: (a) In the case of refusal to provide or permit discovery, drawing negative factual inferences or treating such refusal as an admission by deeming the matter, or certain facts, to be established; (b) prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense; (c) striking pleadings, in whole or in part; (d) staying the proceedings; (e) dismissal of the action; (f) entering a default judgment; (g) ordering the party or attorney to pay attorneys' fees and other costs caused by the failure or misconduct; and (h) refusing to consider any motion or other action which is not filed in a timely manner.

Most of these requirements regarding hearings, insofar as they apply to hearings conducted under 45 CFR part 150, subpart E, are codified in various sections of 45 CFR part 150, subpart D; and in these proposed rules HHS is additionally proposing amendments to 45 CFR 150.401, 150.405, 150.417, 150.445, and 150.455 to conform to these requirements. Therefore, HHS proposes in 45 CFR 150.517 to specify that the provisions in 45 CFR 150.401 through 150.457 apply to a hearing conducted under 45 CFR part 150, subpart E.

HHS proposes in 45 CFR 150.517(b) that if CMS finds a provider or facility to be in violation of a requirement of Part E of Title XXVII of the PHS Act, or section 106(a) of the No Surprises Act, such provider or facility has a right to a hearing pursuant to section 1128A(c)(2) of the SSA. HHS proposes that the provider or facility would be required to file a request for hearing within 30 days after the date of receipt of CMS's notice of proposed determination, to facilitate a timely resolution of the matter.

HHS proposes in 45 CFR 150.517(c) that, consistent with 45 CFR 150.347 as it applies to non-Federal governmental plans and issuers, if the provider or facility fails to request a hearing within the 30 days, any penalty would become final.

30. Failure To Request a Hearing (45 CFR 150.519)

HHS proposes in 45 CFR 150.519 that if the provider or facility does not request a hearing within 30 days of the issuance of the notice of proposed determination, or show good cause, as determined under 45 CFR 150.405(b) for failing to exercise its right to a hearing, the determination becomes final, and CMS would notify the provider or facility of this fact, and the final civil money penalty may be assessed by CMS. CMS would notify the provider or facility in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure of the means by which the provider or facility may satisfy the judgment. HHS further proposes that the provider or facility would have no right to appeal a penalty with respect to which it has not requested a hearing in accordance with 45 CFR 150.405. This aligns with CMS's enforcement procedures when an issuer or non-Federal governmental plan fails to request a hearing.

31. Collateral Estoppel (45 CFR 150.521)

Section 1128A(c)(3) of the SSA states that a provider or facility that requests a hearing under this part may not deny the essential elements of a criminal offense if that provider or facility has been convicted of a Federal crime charging fraud or false statements (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) and the hearing under this part involves the same transaction as the criminal action. HHS proposes to codify that statutory language in 45 CFR 150.521.

32. Judicial Review (45 CFR 150.523)

HHS proposes in 45 CFR 150.523 that any responsible provider or facility against which a final decision imposing a civil money penalty is entered pursuant to this subpart may obtain review in the United States Court of Appeals for the circuit in which the person resides, or where the violation occurred, by filing in such court (within 60 days following the date on which such decision becomes final) a written petition requesting the decision be modified or set aside. Such review would be conducted pursuant to section 1128A of the SSA. A copy of the petition would be transmitted by the clerk of the court to CMS, and thereupon CMS would file in the Court the record in the proceeding as provided in 28 U.S.C. 2112.

33. Notice to Other Agencies (45 CFR 150.525)

At 45 CFR 150.525, HHS proposes that whenever a penalty becomes final, CMS would notify certain organizations and entities about such action and the reasons for it, as appropriate. Section 150.525 lists the organizations or entities that section 1128A(h) of the SSA requires to be notified if a penalty was imposed against a provider or facility: The state or local medical or professional association, the state Department of Health, the appropriate state or local licensing agency or organization, and the appropriate utilization and quality control peer review organization. HHS proposes that CMS may additionally notify the following agencies by providing the final penalty notice, as appropriate: The state Department of Insurance or similar agency, the state Attorney General, the DOL, the Department of the Treasury, or OPM by sharing the final penalty notice. HHS seeks comment on any other organizations or entities that should be notified if a provider or facility is penalized for a violation of the PHS Act or a violation of section 106(a) of the No Surprises Act.

IV. Provisions of the Proposed Rules on Reporting Requirements Regarding Air Ambulance Services—Office of Personnel Management

OPM proposes requirements related to data collection from FEHB carriers with respect to air ambulance services provided to covered individuals in an FEHB plan in the same manner as such provisions apply to a group health plan or health insurance issuer offering group or individual health insurance coverage. The OPM rules would clarify that FEHB carriers are both authorized and required by OPM to report information on air ambulance claims data to HHS in accordance with the requirements of 45 CFR 149.230. OPM would coordinate with HHS to receive FEHB air ambulance data. This data would be used by both HHS in its report to Congress and by OPM in its oversight of the FEHB Program.

Under 5 U.S.C. 8902(p), FEHB carriers must comply with requirements described in section 9817 of the Code, section 717 of ERISA, and section 2799A–2 of the PHS Act in the same manner as those provisions apply to group health plans and health insurance issuers offering group or individual health insurance coverage. Similarly, 5. U.S.C. 8902(p) applies balance billing protections described in section 2799B–5 of the PHS Act to enrollees in an FEHB plan in the same manner as those provisions apply to enrollees in a group health plan or coverage offered by an issuer. Despite these parallel provisions, 5 U.S.C. 8902(p) does not reference the reporting requirements found in section 9823 of the Code, section 723 of ERISA, and section 2799A–8 of the PHS Act.

Under 5 U.S.C. 8910(a), OPM must make a continuing study of the operation and administration of the FEHB Program, including reports on FEHB plans' experience. Under 5 U.S.C. 8910(b), each contract between OPM and FEHB carriers must contain provisions requiring carriers to furnish such reasonable reports as OPM deems necessary to carry out its functions under the FEHB Act. Accordingly, OPM's contract with each FEHB carrier requires the carrier to furnish reports that OPM finds necessary to properly administer the FEHB Program.[35] In addition, 5 U.S.C. 8910(c) requires government agencies to furnish OPM with such information and reports as may be necessary to enable OPM to administer the FEHB Program.

Enactment of 5 U.S.C. 8902(p) extends new surprise billing protections with respect to air ambulance services to FEHB plan enrollees and their covered family members. OPM has determined that in order to effectively carry out its functions under 5 U.S.C. 8902(p), including the underlying goals of increased transparency and lowered costs for FEHB covered individuals, carriers must furnish to HHS air ambulance data as provided for in this proposed rule.

FEHB covered individuals utilize air ambulance services not only domestically but also to transport Federal civilian personnel back to the United States from service performed overseas, in the case of medical emergencies. OPM currently lacks comprehensive information with respect to air ambulance services and claims, and this data could prove important to OPM as it negotiates benefits and rates with carriers pursuant to 5 U.S.C. 8902 as well as relative to its general administration and oversight of the FEHB Program.

OPM maintains authority to study the experience of plans and to require carriers to furnish reports that OPM determines necessary pursuant to 5 U.S.C. 8910, and this may include reports that OPM authorizes as necessary to be submitted to HHS where OPM deems those reports important in support of the FEHB mission. Further, 5 U.S.C. 8910(c) authorizes HHS to share data with OPM that is necessary for OPM's study and oversight of the FEHB Program. For these reasons, OPM proposes to authorize and require FEHB carriers to submit air ambulance data to HHS. OPM would coordinate with HHS to receive FEHB air ambulance services data for its administrative and oversight functions of the FEHB Program under 5 U.S.C. 8910. OPM would enforce carrier compliance with reporting requirements to HHS with respect to FEHB plans. OPM would enforce compliance through its contracts with the carriers.

OPM understands the need to ensure stakeholder and consumer privacy when data is shared with OPM. HHS has taken steps to ensure that claims-level data elements would be limited. OPM would collect and store any data it receives through IT systems that meet all security protocols established by OPM. When using these data, OPM would de-identify and aggregate data to protect the confidentiality of proprietary and personal information.

OPM requests comment on its proposal to require air ambulance services claims data to be reported by FEHB carriers to HHS and for HHS to share this data with OPM.

V. Collection of Information Requirements—The Department of Health and Human Services

Under the Paperwork Reduction Act of 1995 (PRA), the Departments are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. These proposed rules contain information collection requirements (ICRs) that are subject to review by OMB. A description of these provisions is given in the following paragraphs with an estimate of the annual burden, summarized in Table 7. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that the Departments seek comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of the agencies.
- The accuracy of the Departments' estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the

[35] In addition to this statutory authority and parallel contract language, FEHB carrier contracts incorporate FEHB regulations found at 5 CFR parts 890 through 894. As part of this proposed rulemaking, OPM proposes to amend FEHB regulations to direct carriers to comply with requirements of 45 CFR 149.230.

affected public, including automated collection techniques.

The Departments are soliciting public comment on each of the required issues under section 3506(c)(2)(A) of the PRA for the following information collection requirements.

A. Wage Estimates

To derive wage estimates, HHS generally used data from the Bureau of Labor Statistics to derive average labor costs (including a 100 percent increase for fringe benefits and overhead) for estimating the burden associated with the ICRs.[36] Table 1 in these proposed rules presents the mean hourly wage, the cost of fringe benefits and overhead, and the adjusted hourly wage.

As indicated, employee hourly wage estimates have been adjusted by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and overhead costs vary significantly across employers, and because methods of estimating these costs vary widely across studies. Nonetheless, there is no practical alternative, and HHS is of the view that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

TABLE 1—WAGE ESTIMATES

Occupation title	Occupational code	Mean hourly wage ($/hr.)	Fringe benefits and overhead ($/hr.)	Adjusted hourly wage ($/hr.)
Computer and Information Systems Managers	11–3021	$77.76	$77.76	$155.52
Computer Programmers	15–1251	45.98	45.98	91.96
Secretaries and Administrative Assistants, Except Legal, Medical, and Executive	43–6014	19.43	19.43	38.86
Business Operations Specialist	13–1198	40.53	40.53	81.06
Database Administrator	15–1245	48.60	48.60	97.20
Lawyer	23–1011	71.59	71.59	143.18
Insurance Sales Agents	41–3021	33.22	33.22	66.44

B. ICRs Regarding Disclosure of Agent and Broker Compensation to Individuals in Individual Health Insurance Coverage and Short-Term, Limited-Duration Insurance (45 CFR 148.410(c)(2)(i) and (ii) and (c)(3) and (4))

As discussed in section III.B of the preamble of these proposed rules, section 2746 of the PHS Act, as added by section 202(c) of Title II of Division BB of the CAA, requires health insurance issuers offering individual health insurance coverage or short-term, limited-duration insurance to make disclosures to enrollees regarding direct and indirect compensation provided by the issuer to an agent or broker associated with enrolling individuals in such coverage, prior to when the individual finalizes their plan selection, as well as on any documentation confirming the individual's enrollment, including enrollment documentation required in applicable state or Federal law or an initial enrollment package. At new proposed 45 CFR 148.410(c), HHS proposes to codify these disclosure requirements.

HHS assumes that the compensation information to be provided to potential policyholders prior to finalizing enrollment would be provided by agents and brokers on behalf of issuers. As discussed in section III.B of the preamble of these proposed rules, HHS anticipates the required information would be provided in the form of a commission schedule, a similar document satisfying the requirements of 45 CFR 148.410(c)(5), or a supplemental document detailing additional compensation not on the commission schedule, detailing the compensation structure of agents and brokers who assist consumers in enrolling in and purchasing individual health insurance coverage or short-term, limited-duration insurance. HHS anticipates that the burden associated with the disclosure requirement, prior to implementation, would include review by a lawyer. HHS assumes that a lawyer for each issuer would need 2 hours (at an hourly rate of $143.18) to review the regulation, and prepare instructions for issuers to relay to individual agents and brokers to implement the disclosure requirements. The burden for each issuer would be 2 hours, with an equivalent cost of approximately $286. There are an estimated 1,298 issuers in the individual market [37] and 26 issuers of short-term, limited-duration insurance coverage,[38] for a total of 1,324 issuers. Therefore, the total annual burden to all issuers to implement the disclosure requirement would be 2,648 hours with an equivalent cost of approximately $379,141. The review of the statute, regulation, and issuer's implementation plan would likely occur annually to ensure compliance with any potential changes to the regulation. HHS assumes that each agent or broker would need 30 minutes (at an hourly rate of $66.44) annually to review the requirements and the instructions from issuers. The total burden for each agent or broker would be 0.5 hours with an equivalent cost of approximately $33. As of June 10, 2021, there were 55,541 agents or brokers working with issuers and each agent or broker had approximately two appointment arrangements which are mandated by state law and govern the compensation provided to agents and brokers for assisting consumers.[39] Therefore, the total burden for all agents and brokers, to review instructions from the issuers with which they have appointment arrangements, would be 27,770.5 hours, with an equivalent cost of approximately $1,845,072.

HHS estimates the cost associated with this disclosure requirement, when provided in situations related to in-person enrollment in coverage, to be limited to only printing and material costs. HHS estimates that each commission schedule would be, on average, 4 pages in length, at a cost of $0.05 per page, for a total of $0.20 per provided schedule. Printing of supplemental documentation disclosing compensation not included on the commission schedule would be, on

[36] *See* May 2020 Bureau of Labor Statistics, Occupational Employment Statistics, National Occupational Employment and Wage Estimates. Available at *https://www.bls.gov/oes/current/oes_nat.htm.*

[37] Based on data from medical loss ratio (MLR) annual report for the 2019 MLR reporting year, available at *https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.*

[38] National Association of Insurance Commissioners, 2019 Accident and Health Policy Experience Report. *https://content.naic.org/sites/default/files/publication-ahp-lr-accident-health-report.pdf.*

[39] Based on information found in the National Insurance Producer Registry's Producer Database (PDB).

average, 2 pages in length, at a cost of $0.05 per page, for a total of $0.10 per provided supplemental document. HHS assumes, based on experience with the regulation of insurance agents and brokers operating on the Federally-facilitated Exchanges and State-based Exchanges on the Federal Platform, that for most consumers, the information would be provided electronically or orally at minimal cost. HHS assumes that each agent or broker would provide, on average, ten commission schedules and ten supplemental documents in print to consumers annually from each arrangement, for a total of 20 commission schedules and 20 supplemental documents provided in print. Each agent or broker would incur an annual printing cost of approximately $6. For all agents and brokers, HHS estimates that a total of 1,110,820 printed commission schedules and 1,110,820 printed supplemental documents would be provided to consumers, for a total printing cost of $333,246 annually. HHS assumes that agents and brokers would be compensated by issuers for the printing costs associated with providing the compensation schedules and supplemental documents to consumers. Therefore, HHS estimates that each issuer, on average, would incur printing costs of approximately $252 annually, starting in 2022. The total costs to all issuers for disclosures provided prior to enrollment, including printing costs, would be approximately $712,387.

TABLE 2—PROPOSED ANNUAL ONGOING COSTS REGARDING DISCLOSURE OF AGENT AND BROKER COMPENSATION TO ENROLLEES PRIOR TO ENROLLMENT

Respondent	Estimated number of respondents	Estimated number of responses	Estimated burden (hours)	Estimated labor costs ($)	Estimated printing costs	Estimated total cost ($)
Issuer	1,324	1,110,820	2,648	$379,141	$333,246	$712,387
Agents and Brokers	55,541	55,541	27,771.5	1,845,072	0	1,845,072

Issuers would also be required to provide an agent or broker compensation disclosure to individuals on documentation confirming enrollment, including enrollment documentation required by applicable state or Federal law or an initial enrollment package. HHS assumes that the disclosure and supplemental documentation disclosing compensation not included on the commission schedule provided along with documentation confirming enrollment would be available to all enrollees in the same coverage, in the same household, via the policyholder receiving the disclosure information and informing all enrollees on the plan. There are an estimated 1,298 issuers in the individual market providing approximately 8,639,866 enrollment confirmations annually, and 26 issuers of short-term, limited-duration insurance providing approximately 121,038 enrollment confirmations annually. HHS assumes that 50 percent of policyholders with individual health insurance coverage [40] and all policyholders with short-term, limited-duration insurance are assisted by agents or brokers.

In the individual market, 1,298 issuers would be required to provide commission schedules or similar documentation, and supplemental documentation detailing the structure for compensation not captured on the commission schedule, along with approximately 4,319,933 enrollment confirmations, 3,328 on average per issuer. HHS estimates that approximately 66 percent of commission schedules and supplemental documents (2,851,156 disclosures) would be mailed to individuals (34 percent sent electronically) [41] in conjunction with any documents confirming enrollment or renewal notice with no additional mailing costs. Therefore, each issuer would provide approximately 2,197 commission schedules or similar documentation, as well as the supplemental documents by mail annually. HHS assumes that for each issuer, an administrative assistant would need 5 minutes (at an hourly rate of $38.86) to print and enclose a commission schedule or similar documentation, as well as the supplemental document, with the enrollment confirmation or renewal notice, for a cost of $3.24 per commission schedule or similar documentation, and the supplemental documentation. The total burden for each issuer would be approximately 183 hours, with an equivalent cost of approximately $7,113 annually. For all issuers, the total annual burden would be 237,596 hours with an equivalent cost of approximately $9,232,993. Assuming that the cost of printing each commission schedule or similar documentation would be $0.20, and the cost of printing each supplemental document would be $0.10, the average cost of printing for each issuer would be approximately $659 annually and the total cost of printing for all issuers would be approximately $855,347. The total annual cost for all issuers, including printing costs, would be $10,088,340.

For short-term, limited-duration insurance, 26 issuers would be required to provide commission schedules or similar documentation, as well as supplemental documentation detailing the structure for compensation not captured on the commission schedule, along with approximately 121,038 enrollment confirmations, 4,655 on average per issuer. HHS estimates that approximately 66 percent of commission schedules or similar documentation, and supplemental documents (79,885 disclosures) would be mailed to individuals in conjunction with any documents confirming enrollment or renewal notice with no additional mailing costs. Therefore, each issuer would provide approximately 3,073 commission schedules or similar documentation, and supplemental documentation, by mail annually. HHS assumes that for each issuer, an administrative assistant would need 5 minutes (at an hourly rate of $38.86) to print and enclose a commission schedule or similar documentation, and the supplemental documentation, with the enrollment confirmation or renewal notice, for a cost of $3.24 per disclosure. The total burden for each issuer would be approximately 256 hours, with an equivalent cost of approximately $9,950

[40] Agents and brokers accounted for 47.8 percent of all consumers enrolled during the plan year 2020 open enrollment period. Source: CMS, Agents and Brokers in the Marketplace. *https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/Agents-and-Brokers-in-the-Marketplace.pdf.*

[41] According to data from the National Telecommunications and Information Agency, 34 percent of households in the United States accessed health records or health insurance online. *https://www.ntia.doc.gov/blog/2020/more-half-american-households-used-internet-health-related-activities-2019-ntia-data-show.*

annually. For all issuers, the total annual burden would be 6,657 hours with an equivalent cost of approximately $258,695. Assuming that the cost of printing each commission schedule or similar documentation would be $0.20, and the cost of printing each supplemental document would be $0.10, the average cost of printing for each issuer would be approximately $35 annually and the total printing cost for all issuers would be $922. The total annual cost for all issuers, including printing costs would be $259,616.

For issuers of individual health insurance coverage or issuers of short-term, limited-duration insurance, the total combined burden for providing disclosures and supplemental documents with enrollment materials would be 244,253 hours, with an equivalent cost of $9,491,687. The total annual printing cost would be $856,268, with an overall annual total cost of $10,347,956. CMS is seeking an OMB control number and approval for the proposed information collection (OMB control number: 0938–NEW (Agent and Broker Disclosure and Reporting Requirements (CMS–10787)).

TABLE 3—PROPOSED ANNUAL ONGOING COSTS RELATED TO AGENT AND BROKER COMPENSATION DISCLOSURE PROVIDED WITH ENROLLMENT MATERIALS

Type of coverage	Estimated number of respondents	Estimated number of responses	Total burden (hours)	Estimated labor cost	Estimated printing cost	Estimated total cost
Individual health insurance coverage	1,298	4,319,933	237,596	$9,232,993	$855,347	$10,088,340
Short-term, limited-duration insurance	26	121,038	6,657	258,695	922	259,616
Total	1,324	4,440,971	244,253	9,491,687	856,268	10,347,956

C. ICRs Regarding Issuer Requirements for Agent and Broker Compensation Reporting to the Secretary of HHS (45 CFR 148.410(d))

As discussed in section III.B of the preamble, section 2746 of the PHS Act, as added by section 202(c) of Title II of Division BB of the CAA, requires health insurance issuers offering individual health insurance coverage or short-term, limited-duration insurance to submit reports to HHS regarding direct and indirect compensation provided by the issuer to an agent or broker associated with enrolling individuals in such coverage. HHS is proposing to codify these reporting requirements in new proposed 45 CFR 148.410(d).

HHS estimates that each issuer would incur an annual ongoing burden and cost to submit the required information annually to HHS, starting in 2023 (reporting for calendar year 2022 would be due by July 31, 2023). HHS acknowledges that the burden associated with this reporting requirement would vary depending on the size of the issuer. HHS estimates that for each issuer, on average, an administrative assistant would need 10 hours (at an hourly rate of $38.86) and a database administrator would need 40 hours (at an hourly rate of $97.20) to collect and submit the required information, as described in section III.B of the preamble, electronically. HHS estimates that each issuer would incur an annual ongoing burden of 50 hours, with an associated equivalent cost of $4,277. For all 1,324 issuers, HHS estimates a total annual ongoing burden of 66,200 hours and an associated total annual cost of $5,662,218. HHS believes the burden and costs would decrease in subsequent years as issuers become more adept at extracting the data from their systems and submitting it to HHS. CMS is seeking an OMB control number and approval for the proposed information collection (OMB control number: 0938–NEW (Agent and Broker Disclosure and Reporting Requirements (CMS–10787)).

TABLE 4—PROPOSED ANNUAL ONGOING COSTS REGARDING ISSUER REPORTING OF AGENT AND BROKER COMPENSATION TO HHS

Estimated number of respondents	Estimated number of responses	Burden per response (hours)	Total estimated annual burden (hours)	Total estimated labor cost
1,324	1,324	50	66,200	$5,662,218

D. ICRs Regarding Air Ambulance Reporting Requirements for Group Health Plans and Health Insurance Issuers (45 CFR 149.230)

As discussed in section II.E of the preamble, section 106(b) of the No Surprises Act added parallel provisions at section 9823 of the Code, section 723 of ERISA, and section 2799A–8 of the PHS Act, requiring plans and issuers to submit certain data related to air ambulance services for dates of service falling within a calendar year and data on claims paid within the calendar year. In this proposed rule, OPM also proposes to direct FEHB carriers to comply with requirements of 45 CFR 149.230 with respect to an FEHB plan in the same manner as such provisions apply to a group health plan or health insurance issuer offering group or individual health insurance coverage. The proposed time and manner of the reporting are set forth in 45 CFR 149.230(a) of these proposed rules, and 45 CFR 149.230(b) includes a list of the data elements the Departments propose to collect on air ambulance services from plans, issuers, and FEHB carriers. The Departments and OPM assume that TPAs generally would incur the burden to submit the data on behalf of self-insured plans and the associated costs would likely be passed on to those plans. The Departments and OPM acknowledge that some large self-insured plans may seek to make needed IT changes and report the required information to HHS without the use or assistance of a TPA or other third-party entity. In those instances, the self-insured plan would directly incur the burden and cost to meet the requirements of these proposed rules. The Departments and OPM are unable to determine how many self-insured plans may choose to develop their IT system and report the required

information to HHS and seek comment as to the number of plans that may choose to do so.

Issuers, FEHB carriers, and TPAs (and any self-insured plans that choose not to use a TPA or third-party entity to make the appropriate IT and system changes) would incur burdens to make IT changes to collect, consolidate, and report the required information, in the required format, to HHS. The Departments and OPM assume this one-time cost would be incurred in 2022. The Departments and OPM estimate that 473 issuers, 46 FEHB carriers, and 205 TPAs would be subject to the requirements in these proposed rules. The Departments and OPM estimate that for each issuer, FEHB carrier, or TPA to make the appropriate IT changes and submit the required data, it would take a computer and systems information manager 8 hours (at an hourly rate of $155.52) to design and direct the work required for the updates, and a computer programmer 40 hours (at an hourly rate of $91.96) to collaborate with the manager to design and implement system changes. The Departments and OPM estimate each issuer, FEHB carrier, or TPA would incur a one-time burden of 48 hours, with an equivalent cost of $4,923. For all issuers, FEHB carriers, and TPAs to meet the proposed reporting requirements, the Departments and OPM estimate a total one-time burden of 34,752 hours, with an equivalent cost of $3,563,933, to be incurred in 2022.

Once the process for collecting and formatting the required data is established, the Departments and OPM assume that the resources needed to submit the required information for the 2022 and 2023 plan years (to be submitted by March 31, 2023 and March 30, 2024, respectively) would be limited. The Departments estimate that each issuer, FEHB carrier, or TPA would require a computer and systems information manager 4 hours (at an hourly rate of $155.52) to oversee the compilation of the data, a computer programmer 4 hours (at an hourly rate of $91.96) to extract the required data and provide it in the required reporting format, and an administrative secretary 4 hours (at an hourly rate of $38.86) to assemble the documents and submit them to HHS. The Departments and OPM estimate that each issuer, FEHB carrier, or TPA would incur an annual burden of 12 hours, with an equivalent cost of $1,145. For all issuers, FEHB carriers, and TPAs, the Departments and OPM estimate an annual burden of 8,688 hours, with an equivalent cost of approximately $829,241, to be incurred in 2023 and 2024.

The total annual burden for all issuers, FEHB carriers, and TPAs to make the appropriate IT and system changes would be approximately 34,752 hours, at a total cost of approximately $3,563,933 to be incurred in 2022. Issuers, FEHB carriers, and TPAs would also incur an annual burden, in 2023 and 2024, of 8,688 hours and a total cost of approximately $829,241 to submit the data to HHS. The total annual burden for all respondents is likely overestimated because the estimate does not reflect process efficiencies for FEHB carriers that are also issuers. As HHS, DOL, the Department of the Treasury, and OPM share jurisdiction, HHS will account for 45 percent of the burden, or approximately 15,638 hours in 2022 with an equivalent cost of $1,603,770 and an annual burden of approximately 3,910 hours in 2023 and 2024, with an equivalent cost of $373,158. CMS is seeking an OMB control number and approval for the proposed information collection (OMB control number: 0938–NEW (Reporting Requirements Regarding Air Ambulance Services (CMS–10785)). DOL, the Department of the Treasury, and OPM will submit their burden estimates upon approval.

TABLE 5—PROPOSED ONE-TIME AND ANNUAL BURDEN AND COSTS FOR ISSUERS AND TPAS RELATED TO AIR AMBULANCE DATA REPORTING REQUIREMENTS

Year	Estimated number of respondents	Estimated number of responses	Burden per response (hours)	Total estimated annual burden (hours)	Total estimated labor cost ($)
2022	326	326	48	15,638	$1,603,770.05
2023	326	326	12	3,910	373,158.29
2024	326	326	12	3,910	373,158.29
Three-year average	326	326	24	7,819	783,362

E. ICRs Regarding Air Ambulance Reporting Requirements for Providers of Air Ambulance Services (45 CFR 149.460)

As described in section II.F of the preamble, section 106(a) of the No Surprises Act requires providers of air ambulance services to submit cost and organizational data as well as other transport-level data related to air ambulance services. In 45 CFR 149.460(a) of these proposed rules, HHS sets forth the proposed time and manner of reporting, and in 45 CFR 149.460(b), HHS lists the data elements HHS proposes to collect on air ambulance services from providers of air ambulance services. HHS estimates the burden associated with the data reporting required at 45 CFR 149.460 to be the time and effort necessary for providers of air ambulance services to submit the required data elements, in the required format, to HHS.

HHS anticipates a one-time cost for providers of air ambulance services to make IT changes to collect, consolidate, and report the required information, in the required format, to HHS. This one-time cost would be incurred in 2022. HHS estimates that 75 providers of air ambulance services [42] would be subject to the requirements in these proposed rules. HHS estimates that for each provider to make the appropriate IT changes and submit the required data, it would require a computer and systems information manager 80 hours (at an hourly rate of $155.52) to design and direct the work required for the updates, a computer programmer 240 hours (at an hourly rate of $91.96) to collaborate with the manager to design and implement system changes, and a business operations specialist 80 hours (at an hourly rate of $81.06) to provide input regarding the data content for the reports. HHS estimates each provider of air ambulance services would incur a one-time burden of 400 hours, with an equivalent cost of $40,997. For all providers of air ambulance services to

[42] Fact Sheet—FAA Initiatives to Improve Helicopter Air Ambulance Safety. (February 20, 2014). Retrieved from *https://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=15794.*

meet the proposed reporting requirements, HHS estimates a total one-time burden of 30,000 hours, with an equivalent cost of $3,074,760.

Once the process for collecting and formatting the required data is established, HHS assumes that the resources required to submit the required information to HHS for the 2022 and 2023 plan years (to be submitted by March 31, 2023 and March 30, 2024, respectively) would be limited. HHS estimates that each provider of air ambulance services would require a computer and systems information manager 4 hours (at an hourly rate of $155.52) to oversee the compilation of the data, a computer programmer 4 hours (at an hourly rate of $91.96) to extract the required data and provide it in the required reporting format, a business operations specialist 8 hours (at an hourly rate of $81.06) to review the data reports, and an administrative secretary 4 hours (at an hourly rate of $38.86) to assist in the assembly of documents and submit them to HHS. HHS estimates that each provider of air ambulance services would incur an annual burden of 20 hours, with an equivalent cost of $1,794. For all providers of air ambulance services, HHS estimates an annual burden of 1,500 hours, with an equivalent cost of $134,538 in 2023 and 2024.

The total one-time burden and costs, to be incurred in 2022, for all providers of air ambulance services to make the appropriate IT and system changes would be approximately 30,000 hours and a total cost of approximately $3,074,760. Providers of air ambulance services would also incur an annual burden and cost to submit the data to HHS, for 2023 and 2024, of 1,500 hours and $134,538. CMS is seeking an OMB control number and approval for the proposed information collection (OMB control number: 0938–NEW (Reporting Requirements Regarding Air Ambulance Services (CMS–10785)).

TABLE 6—PROPOSED ONE-TIME AND ANNUAL BURDEN AND COSTS RELATED TO AIR AMBULANCE DATA REPORTING REQUIREMENTS FOR PROVIDERS OF AIR AMBULANCE SERVICES

Year	Estimated number of respondents	Number of responses	Burden per response (hours)	Total annual burden (hours)	Total cost
2022	75	75	400	30,000	$3,074,760
2023	75	75	20	1,500	134,538
2024	75	75	20	1,500	134,538
Three-Year Average	75	75	147	11,000	1,114,612

F. ICRs Regarding CMS Enforcement of Group and Individual Insurance Market and Provider and Facility Requirements (45 CFR 150.303, 150.311, 150.313, 150.509, 150.517, and 150.525)

The process by which CMS investigates allegations of non-compliance against issuers and non-Federal governmental plans is detailed in 45 CFR 150.301 through 150.347. Sections 2799A–1(a)(2)(A)(ii) and 2726(a) of the PHS Act, as amended by the CAA, require CMS to conduct certain targeted audits. Therefore, HHS proposed amendments to 45 CFR 150.303(c) to authorize random and targeted investigation and market conduct examinations.

Section 2723(b) of the PHS Act, as amended by the CAA, authorizes the Secretary of HHS to impose civil money penalties as a means of enforcing the individual and group insurance market requirements contained in Part A and Part D of Title XXVII of the PHS Act with respect to health insurance issuers when a state does not have authority to enforce or fails to substantially enforce these provisions and with respect to group health plans that are non-Federal governmental plans in all states. Section 2799B–4 of the PHS Act, as added by section 104 of the No Surprises Act, adopts a similar framework for CMS's enforcement authority over providers and facilities, including providers of air ambulance services, in states that do not have authority or otherwise fail to substantially enforce the requirements of Part E of Title XXVII of the PHS Act, as added by the CAA. In addition, section 106(e) of the No Surprises Act authorizes HHS to impose civil money penalties on providers of air ambulance services for failure to submit to the Secretaries of HHS and Transportation information related to air ambulance services required under section 106(a) of the No Surprises Act.

CMS would take enforcement action upon receiving information that an issuer, non-Federal governmental plan, provider, facility, or provider of air ambulance services may be violating a provision of the PHS Act. Sources of information may include: (i) Complaints; (ii) reports from plans or issuers, providers or facilities, state insurance departments, state health departments, medical boards, the NAIC, and any other Federal or state agencies; and (iii) any other information that indicates potential noncompliance with PHS Act requirements (for example, review of a provider's or issuer's public website). Upon receiving information regarding a potential violation where CMS is responsible for enforcement, or upon being selected for a targeted or random investigation or market conduct examination, CMS would undertake either an investigation or a market conduct examination.

When CMS becomes aware of a potential violation, CMS would commence an investigation by issuing a notice to the responsible entity detailing the potential violation. Such notice would give the responsible entity an opportunity to respond, and state that it may be subject to a civil money penalty or corrective action. HHS proposes that the responsible entity could respond within the allotted time frame (as communicated in the written notice to the responsible entity), request an extension, or default and be subject to the civil money penalty or corrective action. CMS also may subject a provider of air ambulance services to a civil money penalty if such provider fails to submit data required in section 106(a) of the No Surprises Act.

HHS believes this collection is exempt from the PRA under 5 CFR 1320.4(a)(2), which provides an exemption from PRA when information is gathered ''during the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities.''

G. Summary of Annual Burden Estimates for Proposed Requirements

TABLE 7—PROPOSED ANNUAL RECORDKEEPING AND REPORTING REQUIREMENTS

Regulation section	OMB control No.	Respondents	Responses	Burden per response (hours)	Total annual burden (hours)	Hourly labor cost of reporting	Total labor cost of reporting	Printing and materials cost	Total cost
45 CFR 148.410(c)(2)(i)—Issuers	0938–NEW	1,324	1,110,820	2	2,648	$143.18	$379,141	$333,246	$712,387
45 CFR 148.410(c)(2)(i)—Agents and Brokers	0938–NEW	55,541	55,541	0.5	27,771	66.44	1,845,072	0	1,845,072
45 CFR 148.410(c)(2)(ii), 148.410(c)(3)	0938–NEW	1,324	4,440,971	0.06	244,253	2	9,491,687	856,268	10,347,956
45 CFR 148.410(d)	0938–NEW	1,324	1,324	50	66,200	85.53	5,662,218	0	5,662,218
45 CFR 149.230	0938–NEW	326	326	24	7,819	100	783,362	0	783,362
45 CFR 149.460	0938–NEW	75	75	146.67	11,000	101	1,114,612	0	1,114,612
Total		59,914	5,609,057		359,691		19,276,093	1,189,514	20,465,607

H. Submission of PRA-Related Comments

HHS has submitted a copy of these proposed rules to OMB for its review of the rule's information collection and recordkeeping requirements. These requirements are not effective until they have been approved by the OMB.

To obtain copies of the supporting statement and any related forms for the proposed collections, please visit CMS's website at *www.cms.hhs.gov/PaperworkReductionActof1995,* or call the Reports Clearance Office at (410) 786–1326.

HHS invites public comments on these potential information collection requirements. If you wish to comment, please submit your comments electronically as specified in the **ADDRESSES** section of these proposed rules and identify the rule (CMS–9907–P), the ICR's CFR citation, CMS ID number, and OMB control number.

ICR-related comments are due November 15, 2021.

VI. Collection of Information Requirements—The Department of Labor, the Department of the Treasury, and OPM

As part of the continuing effort to reduce paperwork and respondent burden, the Departments conduct a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. This program helps to ensure that the public understands the Departments' collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Departments can properly assess the impact of collection requirements on respondents.

Under the PRA, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number.

The information collections are summarized as follows:

A. ICRs Regarding Air Ambulance Reporting Requirements for Group Health Plans, Health Insurance Issuers, and FEHB Carriers (5 CFR 890.114(e), 26 CFR 54.9823–1, 29 CFR 2590.723)

As discussed in section V.D. of the Collection of Information Requirements for HHS, the total annual burden for all issuers, FEHB carriers, and TPAs (and any self-insured plans that choose not to use a TPA or third-party entity to make the appropriate IT and system changes) would be approximately 34,752 hours, at a total cost of approximately $3,563,933 to be incurred in 2022. Issuers, FEHB carriers, and TPAs would also incur an annual burden, in 2023 and 2024, of 8,688 hours and a total cost of approximately $829,241 to submit the data to HHS. As HHS, DOL, the Department of the Treasury, and OPM share jurisdiction, HHS will account for 45 percent of the burden, DOL and the Department of the Treasury will each share 25 percent of the burden, and OPM will share five (5) percent of the burden. DOL and the Department of the Treasury will share approximately 8,688 hours in 2022 with an equivalent cost of $890,983 and an annual burden of approximately 2,172 hours in 2023 and 2024, with an equivalent cost of $207,310. OPM will share approximately 1,738 hours in 2022 with an equivalent cost of $1,738 and an annual burden of approximately 434 hours in 2023 and 2024, with an equivalent cost of $41,462.

Summary of Burden

Type of Review: New Collection.

Agency: DOL–EBSA, Treasury-IRS, OPM–FEHB.

Title: Air Ambulance Reporting Requirements for Group Health Plans, Health Insurance Issuers, and FEHB Carriers.

OMB Numbers: DOL—1210–NEW, Treasury—1545–NEW.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Total Respondents: 181.

Total Responses: 181.

Frequency of Response: Annually.

Estimated Total Annual Burden Hours: 9,557 (DOL—4,344, Treasury—4,344, OPM—869).

Estimated Total Annual Burden Cost: $957,423 (DOL—$870,402, Treasury—$870,402, OPM—$87,040).

VII. Response to Comments

Because of the large number of public comments the Departments normally receive on **Federal Register** documents, the Departments are not able to acknowledge or respond to them individually. The Departments will consider all comments received by the date and time specified in the **DATES** section of the preamble, and, when the Departments proceed with a subsequent document, the Departments will respond to the comments in the preamble to that document.

VIII. Regulatory Impact Analysis

A. Statement of Need

The proposed reporting requirements in these proposed rules would increase transparency and better understanding regarding agent and broker compensation and the air ambulance industry.

Title II of Division BB of the CAA includes provisions related to increased transparency. The proposed requirements in 45 CFR 148.410 of these proposed rules are related to the agent and broker compensation disclosure and data reporting requirements as set forth in section 202(c) of Title II of Division BB of the CAA. The proposed disclosure requirements would inform consumers of agent and broker compensation prior to enrolling in individual health insurance coverage or short-term,

limited-duration coverage. The proposed reporting requirements would also provide HHS with data for such coverage similar to those collected by the DOL on the compensation provided by issuers of group health insurance coverage.

The proposed requirements in 45 CFR 149.230 and 149.460 of these proposed rules are related to the air ambulance data reporting requirements as set forth in section 106(a) of the No Surprises Act for providers of air ambulance services and section 106(b) of the No Surprises Act, which added parallel provisions at section 9823 of the Code, section 723 of ERISA, and section 2799A–8 of the PHS Act, requiring plans and issuers offering group or individual health insurance coverage to submit claims data related to air ambulance services. The data collection would support the production of the comprehensive report on air ambulance services required under section 106(c) of the No Surprises Act and would enable the identification and analysis of unfair and deceptive practices and unfair methods of competition as noted in section 106(f) of the No Surprises Act. These proposed rules would also implement certain provisions that would allow HHS to enforce the No Surprises Act to protect individuals from surprise medical bills for emergency services, air ambulance services furnished by nonparticipating providers, and non-emergency services furnished by nonparticipating providers at participating facilities in certain circumstances.

The proposed revisions to 45 CFR part 150, including the proposed inclusion of a new subpart E, would accomplish three objectives: (i) Implementing section 2799B–4 of the PHS Act, which subjects providers and facilities, including providers of air ambulance services, to CMS enforcement and oversight in certain circumstances; (ii) updating the existing regulations to ensure they align with industry standards and current CMS practices; and (iii) implementing section 106(e) of the No Surprises Act, which states that a provider of air ambulance services that fails to submit all information required under section 106(a)(2) of the No Surprises Act shall be subject to a civil money penalty of not more than $10,000. The proposed revisions and these new rules are necessary to enable CMS to carry out this statutory mandate and enforce the provisions of the PHS Act and the No Surprises Act against providers and facilities, including providers of air ambulance services. They also serve to strengthen CMS's authority and oversight of issuer and non-Federal governmental plan compliance with applicable PHS Act requirements.

B. Overall Impact

The Departments have examined the impacts of these proposed rules 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 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995, Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. A regulatory impact analysis (RIA) must be prepared for rules with economically significant effects ($100 million or more in any 1 year).

Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. An RIA must be prepared for major rules with economically significant effects ($100 million or more in any 1 year), and a ''significant'' regulatory action is subject to review by OMB. This rule is not likely to have economic impacts of $100 million or more in at least 1 year, and therefore is not expected to be economically significant under Executive Order 12866. OMB has determined, however, that the actions are significant within the meaning of section 3(f)(4) of the Executive order. Therefore, the Departments have provided an assessment of the potential benefits and costs associated with this rule. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by OMB.

The proposed provisions related to disclosure and reporting of direct and indirect agent and broker compensation related to enrollments in individual health insurance coverage and short-term, limited-duration insurance would help provide transparency to consumers wishing to apply for such coverage. The data submitted to HHS by issuers of such coverage would enable HHS to determine the compensation paid to agents and brokers, the structures being used to determine agent and broker compensation, and potentially determine if compensation is being used to intentionally steer individuals toward plans with less comprehensive benefits.

The provisions related to air ambulance data reporting in these proposed rules would provide complete, uniform, nationwide information on air ambulance services that is currently not available. The information collected from providers of air ambulance services would be used to satisfy the requirements for the comprehensive public report described in section 106(c) of the No Surprises Act and to allow the Secretary of Transportation to determine whether a provider of air ambulance services has engaged in unfair and deceptive practices or unfair methods of competition. The data collected from plans and issuers regarding air ambulance services would enable HHS and the Department of Transportation to combine and validate the information collected from plans, issuers, and providers of air ambulance services and would provide additional information to support the production of the report described in section 106(c) of the No Surprises Act. Inclusion of discrete, yet de-identified, air ambulance data from each FEHB carrier will allow for transparency and data validation with respect to air ambulance services provided to FEHB covered individuals, for purposes of ensuring a comprehensive report to Congress, and to further support the implementation of 5 U.S.C. 8902(p) which specifically ends surprise air ambulance bills in the FEHB Program.

In addition, the enforcement provisions in these proposed rules would establish the process by which CMS would investigate complaints and enforce the PHS Act requirements

applicable to non-Federal governmental plans in all states, and issuers, providers, and facilities, including providers of air ambulance services, in states where HHS is directly enforcing PHS Act requirements or in states that are not substantially enforcing the requirements. Furthermore, these provisions detail the process by which CMS would impose civil money penalties against providers and facilities, including providers of air ambulance services, for a violation of an applicable PHS Act provision or for failure to submit required data in compliance with section 106(a) of the No Surprises Act.

Affected entities, such as plans (or third-party administrators on behalf of self-insured group health plans), health insurance issuers, FEHB carriers, issuers of short-term, limited-duration insurance, providers, including providers of air ambulance services, and facilities would incur costs related to the submission of data on air ambulance services, disclosure and reporting of agent and broker compensation, and enforcement actions. In accordance with Executive Order 12866, the Departments are of the view that the benefits of this regulatory action justify the costs.

C. Impact Estimates and Accounting Table

The provisions in these proposed rules would ensure that plans, issuers, providers (including providers of air ambulance services), and facilities subject to HHS's enforcement authority comply with requirements in the No Surprises Act and that participants, beneficiaries and enrollees with health care coverage are protected from surprise medical bills. In addition, having access to information related to agent and broker compensation increases transparency and could help enrollees with individual health insurance coverage and short-term, limited-duration insurance coverage make more informed decisions regarding their health care coverage. In accordance with OMB Circular A–4, Table 8 depicts an accounting statement summarizing the Departments' assessment of the benefits and costs associated with this regulatory action. The Departments are unable to quantify the benefits of these proposed rules, but have included a qualitative discussion. The effects in Table 8 reflect qualitative impacts and estimated direct monetary costs resulting from the provisions of these proposed rules.

TABLE 8—ACCOUNTING TABLE

Benefits and Intended Outcomes:

Qualitative:
- Increased transparency related to agent and broker compensation arrangements and structures, giving consumers more information as they make choices regarding health care coverage.
- Ability for the Federal Government to analyze and/or investigate potential unfair or deceptive practices against consumers, and unfair methods of competition used by providers of air ambulance services.
- Improved compliance with laws prohibiting surprise medical bills due to enforcement actions.

Costs:	Estimate (million)	Year dollar	Discount rate (%)	Period covered
Annualized Monetized ($/year)	$31.82	2021	7	2021–2025
	32.35	2021	3	2021–2025

Quantitative:
- Costs to issuers of individual health insurance coverage and short-term, limited-duration insurance to provide proposed agent and broker compensation disclosures prior to when an individual finalizes their plan selection, and on any documentation confirming initial enrollment, including enrollment documentation required by applicable state or Federal law or an initial enrollment package estimated to be approximately $11.1 million annually beginning in 2022.
- Costs to agents and brokers for providing compensation disclosures prior to when an individual finalizes their plan selection, estimated to be approximately $1.8 million annually beginning in 2022.
- Costs to issuers of individual health insurance coverage and short-term, limited-duration insurance to gather and submit proposed agent and broker compensation data to HHS, expected to be approximately $5.7 million annually beginning in 2023.
- Costs to plans, issuers, FEHB Carriers, and TPAs to submit proposed air ambulance related information to HHS, estimated to be one-time costs of approximately $3.6 million in 2022 and annual costs of approximately $829,241 in 2023 and 2024.
- Costs to providers of air ambulance services to submit proposed information to HHS, estimated to be one-time costs of approximately $3 million in 2022 and annual costs of approximately $134,538 in 2023 and 2024.
- Costs to providers and facilities, including providers of air ambulance services, related to enforcement actions, estimated to be approximately $850,320 annually, starting in 2022.
- Costs to the Federal Government to implement the proposed reporting requirements and enforcement activities, estimated to be $4 million in 2021, $20.3 million in 2022, $22.2 million in 2023, $18.3 million in 2024 and $18.4 million in 2025.

Quantitative:
- Potential reduction in income for agents and brokers and potential costs and reduction in revenue and profits for providers of air ambulance services, if there are changes in consumer behavior and operational changes as a result of greater transparency regarding agent and broker compensation and the air ambulance industry.

1. Background

a. Agent and Broker Compensation

The issue of increasing transparency within the health insurance industry regarding agent and broker compensation has drawn escalating attention in recent years. Part of the increased need for transparency stems from the expanded availability of short-term, limited-duration insurance coverage.[43] Insurance agents or brokers often receive higher commission rates for enrolling consumers in short-term, limited-duration insurance coverage compared to coverage that meets ACA

[43] Department of the Treasury, Department of Labor, Department of Health and Human Services, *Short-Term, Limited-Duration Insurance,* 83 FR 38212 (Aug. 3, 2018) (*www.govinfo.gov/content/pkg/FR-2018-08-03/pdf/2018-16568.pdf*) (final rule).

requirements.[44] There are concerns agents or brokers could encourage consumers to enroll in short-term, limited-duration insurance coverage due to their high commission rates.[45] In addition, there are concerns that there may be deceptive practices surrounding the sale of short-term, limited duration insurance.[46] As described in section III.B of the preamble of this proposed rule, agents and brokers enter into appointment arrangements with health insurance issuers. These arrangements govern compensation provided to agents and brokers for assisting consumers with enrollment in an issuer's policies. The specific compensation arrangement between an issuer and the agent or broker is typically laid out in the commission schedule. Compensation arrangements may also include other types of compensation, such as fees and bonuses. Section 2746 of the PHS Act requires both direct and indirect compensation to be disclosed and taken into account for all requirements herein.

b. Surprise Medical Bills for Air Ambulance Services

The issue of surprise medical bills for air ambulance services has drawn increasing attention from the public as the amounts charged by providers of air ambulance services have risen drastically in recent years and because utilization of air ambulance services frequently results in surprise bills. A study by the GAO analyzed private health insurance claims from 2012 and 2017 to describe the extent to which air ambulance transports are out-of-network.[47] That study analyzed claims data from approximately 24,100 air ambulance transports in 2012 and another 33,800 transports in 2017 from all 50 states and the District of Columbia. The study found that in 2012, 75 percent of transports were out-of-network and in 2017, 69 percent were out-of-network. The GAO also reported that the median price charged by providers of air ambulance services had increased from a rate of $22,100 for rotary-wing and $24,900 for fixed-wing in 2012 to approximately $36,400 for rotary-wing and $40,600 for a fixed-wing transport in 2017. The prices charged in 2017 were an increase of over 60 percent from 2012. A previously published report by the GAO also noted that between 2010 and 2014, the median prices charged by providers of air ambulance services for rotary-wing transports approximately doubled.[48] Another study found that for one of the largest providers (with a market share of approximately 24 percent) the average charge increased from $17,262.23 in 2009 to approximately $50,199.24 by 2016.[49]

As the costs associated with air ambulance transports have continued to increase, the GAO reported that providers of air ambulance services report entering into more network contracts.[50] However, additional analyses found that many providers of air ambulance services, particularly those not affiliated with a hospital, do not participate in issuer networks and have little incentive to do so, further noting that network participation remains low and provider avoidance of insurance network participation combined with aggressive collection practices has been described as a business strategy of some providers of air ambulance services.[51]

A study using 2014 through 2017 data from three large issuers to evaluate the share of air ambulance claims that are out-of-network and the prevalence and magnitude of potential surprise balance bills found that 77 percent of transports were out-of-network, and approximately 40 percent of transports resulted in potential balance bills. The bills averaged approximately $19,851 in addition to the standard out-of-network cost sharing, which averaged $561. The study also found that for out-of-network rotary-wing claims, issuers paid the providers' full billed charges approximately 48 percent of the time, for an average of $35,733 and that for in-network providers, billed charges were paid in full only 7 percent of the time. The study noted that self-insured plans paid out-of-network claims in full 50 percent of the time, whereas fully-insured plans paid claims in full 38 percent of the time,[52] indicating that individuals enrolled in self-insured plans were less likely to receive balance bills than individuals enrolled in fully-insured plans.

As states, the Federal Government, oversight agencies, and advocacy groups have examined the issue of air ambulance services and balance billing, it has become clear that there is a lack of comprehensive, national data on air ambulance costs, transports, and contractual arrangements between providers of air ambulance services and group health plans and health insurance issuers. Two GAO reports (2017 and 2019) and the FAA Reauthorization Act of 2018 indicate that it is necessary to collect data to better inform policymakers and consumers about the air ambulance services market. For example, increased transparency regarding the costs to provide air ambulance services and billed and paid amounts for air ambulance services would be beneficial in assessing obstacles to network inclusion and contract negotiations involving providers of air ambulance services. Transparency regarding the number and location of air ambulance bases would enable assessment of the availability of services and competition in the air ambulance marketplace. Finally, a publicly-available report regarding air ambulance services would help to improve policymakers' and consumers' understanding of the air ambulance industry.

c. Enforcement

Section 2723 of the PHS Act provides that states are the primary enforcers of the requirements applicable to issuers that issue, sell, renew, or offer health insurance coverage in the state in the

[44] *See* U.S. House of Representatives Committee on Energy and Commerce report ''Shortchanged: How the Trump Administration's Expansion of Junk Short-Term Health Insurance Plans is Putting Americans at Risk.'' Page 43 (stating the average commission rate for short-term, limited-duration insurance plans was 23 percent while the average commission rate for ACA-compliant plans was approximately 2 percent in 2018).

[45] *Id.* At 38 (stating issuers offering short-term, limited-duration insurance coverage have business practices that incentivize agents and brokers to engage in fraudulent or misleading practices).

[46] *See* Health Care Sabotage Online: A Warning to Consumers, October 2019 (*https://www.casey.senate.gov/imo/media/doc/Senator%20Casey%20-%20Health%20Care%20Sabotage%20Online%20FINAL.pdf*).

[47] GAO (2019) Report to Congressional Committees. Air Ambulance. Available Data Show Privately-Insured Patients Are at Financial Risk (GAO–19–292) available at: *https://www.gao.gov/assets/700/697684.pdf.* The data analyzed included claims from over 50 payors in each year (including both fully- and self-insured plans) and accounted for 110.1 million covered lives in 2012 and 145.0 million covered lives in 2017.

[48] GAO (2017) Report to the Committee on Transportation and Infrastructure, House of Representatives. Air Ambulance. Data Collection and Transparency Needed to Enhance DOT Oversight. (GAO–17–637) available at: *https://www.gao.gov/assets/gao-17-637.pdf.*

[49] Consumer Union. Up in the Air: Inadequate Regulation for Emergency Air Ambulance Transportation. Health Policy Report, March 2017.

[50] GAO (2019) Report to Congressional Committees. Air Ambulance. Available Data Show Privately-Insured Patients Are at Financial Risk (GAO–19–292) available at: *https://www.gao.gov/assets/700/697684.pdf.*

[51] Missouri Department of Insurance, Financial Institutions & Professional Registration. Policy Brief: Health Coverage for Air Ambulance Transportation. January 2019; and New Mexico Office of the Superintendent of Insurance. Air Ambulance Memorial Study Report. January 2017. Available at: *https://www.nmlegis.gov/handouts/ERDT%20083117%20Item%208%20NM%20Superintendent%20of%20Insurance%20Air%20Ambulance%20Memorial%20Study%20Report.pdf.*

[52] Brown, E.C.F. et al., Out-of-Network Air Ambulance Bills: Prevalence, Magnitude, and Policy Solutions. The Milbank Quarterly, Vol. 98, No. 3, 2020 (pp. 747–774).

individual or group market. If HHS determines that a state has failed to substantially enforce a provision of Title XXVII of the PHS Act, HHS enforces that provision with respect to issuers in the state. HHS further enforces the requirements applicable to non-Federal governmental plans in all states. Any non-Federal governmental plan or any issuer subject to HHS's enforcement authority that fails to comply with an applicable provision of Part A or Part D of Title XXVII is subject to a civil money penalty.

Section 2799B–4 of the PHS Act provides that states are the primary enforcers of the requirements applicable to providers and facilities under Part E of Title XXVII of the PHS Act, including providers of air ambulance services. If HHS determines that a state has failed to substantially enforce an applicable provision, HHS enforces that provision in the state. Any provider or facility, including a provider of air ambulance services, that HHS has determined to be in violation of an applicable provision in Part E of Title XXVII of the PHS Act may be subject to a civil money penalty. Under part 106(e) of the No Surprises Act, any provider of air ambulance services that fails to submit data required in section 106(a) of the No Surprises Act may also be subject to a civil money penalty.

According to researchers at the Center on Health Insurance Reforms, Georgetown University Health Policy Institute, 18 states have adopted comprehensive surprise billing protections, and 15 states have adopted partial protections.[53] The state agency responsible for implementing and enforcing these protections vary among states. According to the Center on Health Insurance Reforms, ''Some states direct their insurance department to ensure compliance with the law, but while insurance departments have clear jurisdiction over insurance companies, they often lack jurisdiction over providers. Some states may rely on their medical licensing authority or ''deceptive trade practice'' statutes to enforce requirements on providers; other states may be dependent on the attorney general filing a civil lawsuit against providers who continue to send surprise bills to patients.'' [54] States have also identified the State Department of Health as the agency with oversight authority over providers with respect to surprise billing requirements. Because many of these state laws are relatively new, there is little empirical evidence about the cost to state regulators and the regulated parties subject to the surprise billing protections.

2. Benefits and Intended Outcomes

The provisions of this proposed rule require health insurance issuers offering individual health insurance coverage or short-term, limited-duration insurance to disclose to policyholders any direct or indirect compensation provided by the issuer to an agent or broker associated with enrolling individuals in such coverage. The proposed disclosure requirements would improve consumers' awareness by providing information on how agents and brokers are compensated with regard to the coverage sold to those individuals or renewed on behalf of the individuals. In this way, consumers will be able to take this into account as they make decisions about obtaining health coverage. Knowing how much an agent or broker would earn in commissions for selling them health insurance coverage could inform a consumer as to whether an agent's or broker's recommendations or promotions of individual health insurance coverage or short-term, limited-duration insurance is due to a potential conflict of interest. Disclosing this information would provide additional clarity to consumers and help inform whether they want to enroll in, or renew, a particular health insurance coverage. To the extent vulnerable populations, including those with ongoing or prior health conditions, are being encouraged to enroll in short-term, limited-duration insurance,[55] the proposed disclosure requirements might help these individuals better understand the agent's and broker's motivations and incentives in marketing and recommending such coverage. As short-term, limited-duration insurance is generally exempt from the ACA's individual market consumer protection provisions,[56] issuers of such coverage can draw in lower-income or healthy individuals by offering lower premiums than plans that offer the ACA consumer protections.[57] It is important for agents or brokers to disclose their commissions so individuals can take into account the agent's or broker's potential motivations for encouraging enrollment in a specific type of coverage.

All health insurance issuers offering individual health insurance coverage or short-term, limited-duration insurance would be required to report annually to HHS any direct or indirect compensation provided to an agent or broker associated with enrolling individuals in such coverage. HHS would use analysis of this information to monitor the marketing operations and practices of issuers of individual health insurance coverage and short-term, limited-duration insurance and inform future policy-making decisions.

The air ambulance data collection would advance policymakers' and the public's understanding of the air ambulance industry and increase the transparency of the market conditions affecting air ambulance services. In addition, the data collected from providers of air ambulance services may be used by the Secretary of Transportation to investigate potential unfair or deceptive practices used by these providers against consumers as well as potentially unfair methods of competition in the air ambulance service market.

Surprise medical bills result in higher out-of-pocket expenses and cause financial anxiety and medical debt for consumers.[58] These proposed rules would establish an enforcement process to help ensure plans, issuers, providers, and facilities, including providers of air ambulance services, comply with the provisions of the PHS Act. Without strong Federal oversight and enforcement mechanisms, there would be no practical consequences when providers and facilities, including providers of air ambulance services, fail to comply with the PHS Act in states that are not directly enforcing the applicable requirements. The Federal oversight and enforcement procedures proposed in 45 CFR part 150 would increase provider and facility, compliance with the new surprise

[53] *See* Kona, Maanasa ''State Balance-Billing Protections.'' *The Commonwealth Fund,* 5 February 2021, *https://www.commonwealthfund.org/publications/maps-and-interactives/2021/feb/state-balance-billing-protections.*

[54] *See https://surprisemedicalbills.chir.georgetown.edu/policy-options/enforcement/.*

[55] Curran, E. U.S. House Investigation Offers New Evidence on the Dangers of Short-Term Plans. CHIRblog, July 9, 2020, *http://chirblog.org/u-s-house-investigation-offers-new-evidence-dangers-short-term-plans/.*

[56] *See,* for example, Excepted Benefits; Lifetime and Annual Limited; and Short-Term Limited-Duration Insurance; final rules, 81 FR 75316 at 75317 (October 31, 2016) and Short-Term, Limited Duration Insurance; final rule, 83 FR 38212 at 38213 (August 3, 2018).

[57] *See* U.S. House of Representatives Committee on Energy and Commerce report ''Shortchanged: How the Trump Administration's Expansion of Junk Short-Term Health Insurance Plans is Putting Americans at Risk.'' Page 12 (*https://www.hsdl.org/?view&did=841078*) and House Committee on Energy and Commerce. E&C Investigation Finds Millions of Americans Enrolled in Junk Health Insurance Plans That Are Bad For Consumers & Fly Under the Radar of State Regulators, Press Release (Jun 25, 2020), *https://energycommerce.house.gov/newsroom/press-releases/ec-investigation-finds-millions-of-americans-enrolled-in-junk-health.*

[58] Garmon C. and Chatock B. One In Five Inpatient Emergency Department Cases May Lead to Surprise Bills, Health Affairs 36, No. 1 (2017): 177–181.

billing and transparency requirements in 45 CFR part 149. Compliance with these provisions is necessary to inform future policy that could help reduce financial anxiety and medical debt by reducing surprise medical bills for individuals with health coverage.

3. Costs

Health insurance issuers offering individual health insurance coverage or short-term, limited-duration insurance would incur costs to comply with the agent and broker compensation disclosure and reporting requirements set forth in these proposed rules. Issuers would incur annual costs of approximately $712,387 to provide agent or broker compensation disclosure and supplemental documentation detailing additional compensation not on the commission schedule prior to enrollment and approximately $10.3 million to provide the disclosure in documentation confirming enrollment, starting in 2022. Additionally, issuers would incur annual ongoing costs of approximately $5.7 million to collect and submit the required agent and broker compensation and supplemental documentation detailing additional compensation not on the commission schedule information to HHS starting in 2023. Agents and brokers would incur annual costs of approximately $1.8 million to provide agent or broker compensation disclosure and supplemental documentation detailing additional compensation not on the commission schedule prior to enrollment beginning in 2022. These costs are discussed in detail in the Collection of Information Requirements section of the preamble.

Issuers, FEHB Carriers, TPAs, and providers of air ambulance services would incur costs to comply with the air ambulance services reporting requirements set forth in these proposed rules. The Departments estimate that 473 issuers, 46 FEHB carriers, and 205 TPAs would incur one-time costs of approximately $3.6 million in 2022 and annual costs of approximately $829,241 in 2023 and 2024 to comply with this requirement. These total costs are likely overestimated because the estimate does not reflect process efficiencies for FEHB carriers that are also issuers. In addition, 75 providers of air ambulance services would incur one-time costs of approximately $3 million in 2022 and annual costs of approximately $134,538 in 2023 and 2024 to comply with the reporting requirement. These costs are discussed in detail in the Collection of Information Requirements section of the preamble.

Increased transparency regarding agent and broker compensation and greater consumer awareness of potential conflicts of interest for agents and brokers might lead fewer consumers to choose short-term, limited-duration insurance if they feel they are being steered toward such plans due to an agent's or broker's financial self-interest. It might also encourage some agents and brokers to avoid such conflicts of interest. This could result in a reduction in income for some agents and brokers. Increased transparency regarding the air ambulance industry might also lead to operational changes for some providers of air ambulance services, such as an increase in the number of participating providers of air ambulance services for plans and reduced charges. Providers of air ambulance services that make any operational changes would incur related costs and might experience a reduction in profits.

Providers and facilities, including providers of air ambulance services, would, on occasion, incur costs related to enforcement actions taken by CMS. When CMS becomes aware of a potential violation of the PHS Act and is responsible for enforcement, CMS would commence an investigation by issuing a notice to the responsible entity detailing the potential violation. Such notice would give the responsible entity an opportunity to respond, and state that it may be subject to a civil money penalty or corrective action. The responsible entity could respond within the allotted time frame, request an extension, or default and be subject to the civil money penalty or corrective action when there is sufficient evidence indicating there is a PHS Act violation. HHS estimates that, on average, CMS would conduct approximately 200 investigations per month, for a total of 2,400 investigations per year, starting in 2022. HHS estimates that for each potential violation being investigated, a medical secretary would need 3 hours on average (at a rate of $37.50 per hour) and a manager would need 2 hours on average (at a rate of $120.90 per hour) to prepare a response and collect supporting documents and submit them to CMS.[59] The cost for each responsible entity subject to a CMS investigation is estimated to be approximately $354 for each investigation. The total annual cost related to all 2,400 investigations would be approximately $850,320. HHS anticipates that the number of investigations and the associated costs would decrease over time as compliance improves.

CMS would review the response provided by the responsible entity and determine if the entity violated a provision of the PHS Act. HHS proposes that if CMS determines that the responsible entity did violate a provision of the PHS Act, then it may impose civil money penalties not to exceed $10,000 per violation. If CMS determines that a provider of air ambulance services failed to submit information required in section 106(a) of the No Surprises Act by the due date, including any extensions granted, then it may impose civil money penalties not to exceed $10,000. If the responsible entity timely files a request for appeal, such appeal would be heard before an administrative law judge, who would conduct any appeal as provided in 45 CFR 150.401 through 150.465. Finally, HHS proposes that a responsible entity can appeal the decision of an administrative law judge to the United States Court of Appeals for the district where the provider, facility, or provider of air ambulance services is located or the violation occurred. At this time, HHS is unable to estimate the number of responsible entities that would appeal a penalty or the decision of an administrative law judge and the associated cost.

In addition, the Federal Government would incur costs to build and maintain IT systems to receive, store, and analyze agent and broker compensation data and air ambulance data. In addition, the Federal Government would incur costs related to enforcement of the PHS Act, such as enforcement of reporting requirements for issuers and providers of air ambulance services, conducting compliance reviews of provider and facility websites, review of complaints received, and investigating instances of potential violations of the PHS Act by providers and facilities, including providers of air ambulance services, in states where HHS is directly enforcing PHS Act requirements. The Departments estimate that the total costs associated with these activities would be $4 million in 2021, $20.3 million in 2022, $22.2 million in 2023, $18.3 million in 2024, and $18.4 million in 2025.

D. Regulatory Alternatives Considered

In developing the policies contained in these proposed rules, the Departments considered various alternatives to the presented proposals.

[59] *See* May 2020 Bureau of Labor Statistics, Occupational Employment Statistics, National Occupational Employment and Wage Estimates. Available at *https://www.bls.gov/oes/current/oes_nat.htm.* Medical Secretaries and Administrative Assistants (43–6013) $18.75 * 2 = $37.50 * 3 hours = $112.50 and General and Operations Manager (11–1021) $60.45 * 2 = $120.90 * 2 = $241.80. Total cost, $112.50 + $241.90 = $354.30.

In determining the disclosure and data reporting requirements for agent and broker compensation in these proposed rules, HHS considered requiring disclosure of intermediary payments to consumers (for example, payments made through general line agencies or marketing organizations) prior to finalizing enrollment. That level of detail was determined to be impractical and would not have enough positive impact on the consumer to justify the cost to implement. HHS also considered requiring the disclosure of actual amounts of compensation an agent or broker would receive. That, too, was rejected as being impossible to calculate ahead of time, as well as being potentially overly burdensome on the sales process. Furthermore, HHS considered requiring signed documentation from the consumer stating disclosure had occurred. This was not pursued, given concerns regarding burden.

In determining the data reporting requirements for air ambulance services contained in these proposed rules, the Departments considered available alternative regulatory proposals. Given the statutory requirements of section 106 of the No Surprises Act, these alternatives were limited to reducing the number of data reporting elements required. However, collecting data in a more aggregated format would not support many of the analyses required in the statute for the comprehensive report on air ambulance services required under section 106(c). Section 106(c) of the No Surprises Act requires, among other analyses, assessments of amounts paid by issuers for furnishing air ambulance services, amounts paid out-of-pocket by consumers, any changes in the amounts paid over time and as an assessment of any evidence of gaps in rural access to air ambulance services. The absence of detailed transport-level data would limit the Secretaries' of HHS and Transportation ability to conduct these analyses.

E. Regulatory Flexibility Act

The RFA (5 USC 601, *et seq.*), requires agencies to prepare an initial regulatory flexibility analysis to describe the impact of these proposed rules on small entities, unless the head of the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. The RFA generally defines a ''small entity'' as: (1) A proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a not-for-profit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of ''small entity.'' HHS uses a change in revenues of more than 3 to 5 percent as its measure of significant economic impact on a substantial number of small entities.

The provisions in these proposed rules would affect health insurance issuers, group health plans, TPAs (on behalf of self-insured group health plans), and issuers of short-term, limited-duration insurance. Health insurance issuers and group health plans would be classified under the North American Industry Classification System (NAICS) code 524114 (Direct Health and Medical Insurance Carriers). According to SBA size standards, entities with average annual receipts of $41.5 million or less are considered small entities for this North American Industry Classification System codes. Issuers could possibly be classified in 621491 (HMO Medical Centers) and, if this is the case, the SBA size standard would be $35 million or less.[60] The Departments expect that few, if any, insurance companies underwriting comprehensive health insurance policies (in contrast, for example, to travel insurance policies or dental discount policies) fall below these size thresholds. Based on data from medical loss ratio (MLR) annual report [61] submissions for the 2019 MLR reporting year, approximately 77 out of 473 issuers of health insurance coverage nationwide had total premium revenue of $41.5 million or less. This estimate may overstate the actual number of small health insurance companies that may be affected, since over 67 percent of these small companies belong to larger holding groups, and many, if not all, of these small companies are likely to have non-health lines of business that will result in their revenues exceeding $41.5 million. The Departments are of the view that the same assumptions also apply to TPAs that would be affected by these proposed rules.

Providers of air ambulance services would be classified under NAICS code 621910 (Ambulance Services), with a size standard of $16.5 million or less. Based on a 2020 USC-Brookings Schaeffer report on air ambulance services,[62] by 2017, large private equity firms controlled roughly two-thirds of the air ambulance market. The Departments lack data on the number of small entities in the air ambulance market. As discussed earlier in the Collection of Information Requirements section, a provider of air ambulance services would incur a cost of approximately $41,000 in 2022 and annual costs of $1,794 in 2023 and 2024 to submit the required information to HHS. The Departments seek comment on whether any providers of air ambulance services may be considered small entities (including entities with annual revenue under $16.5 million or independent not-for-profit entities not dominant in the industry) and whether these costs would result in an impact of more than 3 to 5 percent of revenues for those small entities.

Agents and brokers would be classified under NAICS code 524210 (Insurance Agencies and Brokerages), with a size standard of $8 million or less. The proposed requirement to provide agent or broker compensation disclosure to individuals prior to enrollment would affect an estimated 55,541 agents and brokers, many of whom are likely to be employed by small entities. As discussed earlier in the HHS Collection of Information Requirements section, an agent or broker would incur a cost of approximately $33 to comply with the proposed requirement. This is unlikely to cause a change in revenue of more than 3 to 5 percent for agents and brokers.

As discussed earlier in the Regulatory Impact Analysis, the proposed provisions related to enforcement in these proposed rules regarding enforcement of section 2799B–4 of the PHS Act would also affect approximately 2,400 providers (including providers of air ambulance services) and facilities annually, some of which might be small entities. A provider or facility subject to investigation would incur a cost of approximately $354. This is unlikely to cause a change in revenue of more than 3 to 5 percent for providers and facilities.

Therefore, the Departments do not anticipate that the proposed provisions in these proposed rules would have a significant effect on a substantial number of small entities. The Departments seek comment on this analysis.

In addition, section 1102(b) of the SSA requires the Departments to prepare a regulatory impact analysis if a rule under Title XVIII, Title XIX, or part B of Title 42 of the *SSA* may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to

[60] *https://www.sba.gov/document/support--table-size-standards.*

[61] Available at *https://www.cms.gov/CCIIO/Resources/Data-Resources/mlr.html.*

[62] Adler, L., Hannick, K., and Lee, S. High Air Ambulance Charges Concentrated in Private Equity-Owned Carriers. USC-Brookings Schaffer Initiative for Health Policy. October 13, 2020.

the provisions of section 603 of the RFA. For purposes of section 1102(b) of the SSA, the Departments define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. While this rule is not subject to section 1102 of the SSA, the Departments have determined that these proposed rules would only affect small rural hospitals if they are subject to an enforcement action. However, as discussed earlier in the RIA, a facility subject to investigation would incur a cost of approximately $354. Therefore, the Departments are of the view that these proposed rules would not have a significant impact on the operations of a substantial number of small rural hospitals. The Departments seek comment on this analysis.

F. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a proposed rule that includes any Federal mandate that may result in expenditures in any 1 year by a state, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. Currently, that threshold is approximately $158 million. As discussed earlier in the RIA, plans, issuers, providers, and facilities, including providers of air ambulance services, would incur costs to comply with the proposed provisions of these proposed rules. The Departments estimate the combined impact on state, local, or Tribal governments and the private sector would not be above the threshold.

G. Federalism

Executive Order 13132 establishes certain requirements that Federal agencies must meet when they issue proposed rules that imposes substantial direct costs on state and local governments, preempts state law, or otherwise has federalism implications.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have federalism implications or limit the policy making discretion of the states, the Departments have engaged in efforts to consult with and work cooperatively with affected states, including participating in conference calls with and attending conferences of the NAIC, and consulting with state insurance officials on an individual basis.

While developing this rule, the Departments attempted to balance the states' interests in regulating health insurance issuers, providers, including providers of air ambulance services, and facilities with the need to ensure market stability. By doing so, the Departments complied with the requirements of Executive Order 13132.

Section 2799B–4(a)(1) of the PHS Act provides that states serve as the primary enforcement authority for these new requirements.[63] Section 2799B–4(a)(2) of the PHS Act provides that if the Secretary of HHS determines that a state has failed to substantially enforce any of these new requirements, then HHS shall assume enforcement of such provision. Therefore, the proposed amendments in this rulemaking would apply the process outlined in 45 CFR 150.201 through 150.221. by which HHS determines that a state is not substantially enforcing a PHS Act provision to the enforcement of the requirements in section 2799B–4. The remaining subparts of 45 CFR part 150 that relate to CMS enforcement of section 2799B–4 would apply only when the Secretary of HHS makes the determination that a state has substantially failed to enforce.

Section 2799B–4(c) of the PHS Act provides that ''the sections specified in subsection (a)(1) shall not be construed to supersede any provision of state law which establishes, implements, or continues in effect any requirement or prohibition except to the extent that such requirement or prohibition prevents the application of a requirement or prohibition of such a section.'' These proposed rules would not preempt any state law except to the extent that the Secretary of HHS makes the determination that a state has substantially failed to enforce.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on August 26, 2021.

List of Subjects

5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2590

Continuation coverage, Disclosure, Employee benefit plans, Group health plans, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

45 CFR Part 144

Health care, Health insurance, Reporting and recordkeeping requirements.

45 CFR Part 148

Administrative practice and procedure, Health care, Health insurance, Insurance companies, Penalties, Reporting and recordkeeping requirements.

45 CFR Part 149

Balance billing, Health care, Health insurance, Reporting and recordkeeping requirements, Surprise Billing, State regulation of health insurance, Transparency in coverage.

45 CFR Part 150

Administrative practice and procedure, Health care, Health insurance, Penalties, Reporting and recordkeeping requirements.

Laurie Bodenheimer,

Associate Director, Healthcare and Insurance, Office of Personnel Management.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement, Internal Revenue Service.

Ali Khawar,

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

Xavier Becerra,

Secretary, Department of Health and Human Services.

OFFICE OF PERSONNEL MANAGEMENT

For the reasons stated in the preamble, the Office of Personnel Management proposes to amend 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

■ 1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.102 also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 890.111 also issued under section 1622(b) of Pub. L. 104–106, 110 Stat. 521 (36 U.S.C. 5522); Sec. 890.112 also issued under section 1 of Pub. L. 110–279, 122 Stat. 2604

[63] 45 CFR 150.201 currently provides that ''. . . each State enforces PHS Act requirements with respect to health insurance issuers that issue, sell, renew, or offer health insurance coverage in the State.''

(2 U.S.C. 2051); Sec. 890.113 also issued under section 1110 of Pub. L. 116–92, 133 Stat. 1198 (5 U.S.C. 8702 note); Sec. 890.301 also issued under section 311 of Pub. L. 111–3, 123 Stat. 64 (26 U.S.C. 9801); Sec. 890.302(b) also issued under section 1001 of Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–152, 124 Stat. 1029 (42 U.S.C. 300gg–14); Sec. 890.803 also issued under 50 U.S.C. 3516 (formerly 50 U.S.C. 403p) and 22 U.S.C. 4069c and 4069c–1; subpart L also issued under section 599C of Pub. L. 101–513, 104 Stat. 2064 (5 U.S.C. 5561 note), as amended; and subpart M also issued under section 721 of Pub. L. 105–261 (10 U.S.C. 1108), 112 Stat. 2061; 25 U.S.C. 1647b.

Subpart A—Administration and General Provisions

■ 2. Section 890.114 is amended by adding reserved paragraph (d) and paragraph (e) to read as follows:

§ 890.114 Surprise billing.

* * * * *

(e) A carrier must comply with requirements of 45 CFR 149.230 with respect to an FEHB plan in the same manner as such provisions apply to a group health plan or health insurance issuer offering group or individual health insurance coverage and within the time frame set forth in 45 CFR 149.230(a)(2). This paragraph (e) applies to data for each of the 2022 and 2023 calendar years.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Accordingly, 26 CFR part 54 is proposed to be amended as follows:

PART 54—PENSION EXCISE TAXES

■ **Paragraph 3.** The authority citation for part 54 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805, unless otherwise noted.

* * * * *

■ **Par. 4.** Section 54.9823–1 is added to read as follows:

§ 54.9823–1 Air ambulance reporting requirements.

(a) *In general.* Each group health plan that satisfies the requirements of 45 CFR 149.230 satisfies the requirements to submit a report to the Secretary of the Treasury pursuant to section 9823 of the Code.

(b) *Applicability.* This section applies to data for each of the 2022 and 2023 calendar years.

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Chapter XXV

For the reasons set forth in the preamble, the Department of Labor proposes to amend 29 CFR part 2590 as set forth below:

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

■ 5. The authority citation for part 2590 continues to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1181 note, 1185, 1185a–n, 1191, 1191a, 1191b, and 1191c; sec. 101(g), Pub. L. 104–191, 110 Stat. 1936; sec. 401(b), Pub. L. 105–200, 112 Stat. 645 (42 U.S.C. 651 note); sec. 512(d), Pub. L. 110–343, 122 Stat. 3881; sec. 1001, 1201, and 1562(e), Pub. L. 111–148, 124 Stat. 119, as amended by Pub. L. 111–152, 124 Stat. 1029; Division M, Pub. L. 113–235, 128 Stat. 2130; Pub. L. 116–260 134 Stat. 1182; Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2012).

■ 6. Section 2590.723 is added to read as follows:

§ 2590.723 Air ambulance reporting requirements.

(a) *In general.* Each group health plan or health insurance issuer offering group health insurance coverage that satisfies the requirements of 45 CFR 149.230 satisfies the requirements to submit a report to the Secretary of Labor pursuant to section 723 of the Employee Retirement Income Security Act of 1974, as amended.

(b) *Applicability.* This section applies to data for each of the 2022 and 2023 calendar years.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

For the reasons stated in the preamble, the Department of Health and Human Services proposes to amend 45 CFR parts 144, 148, 149, and 150 as set forth below:

PART 144—REQUIREMENTS RELATING TO HEALTH INSURANCE COVERAGE

■ 7. The authority citation for part 144 continues to read as follows:

Authority: 42 U.S.C. 300gg through 300gg–63, 300gg–91, 300gg–92, and 300gg–111 through 300gg–139, as amended.

■ 8. Section 144.101 is amended by revising paragraphs (e) introductory text and (e)(1) and (2) to read as follows:

§ 144.101 Basis and purpose.

* * * * *

(e) Part 150 of this subchapter implements the enforcement provisions of sections 2723, 2761, and 2799B–4 of the PHS Act, as well as section 106 of the No Surprises Act, with respect to the following:

(1) States that fail to substantially enforce one or more provisions of part 146 of this subchapter concerning group health insurance coverage, one or more provisions of part 147 of this subchapter concerning group or individual health insurance coverage, one or more provisions of part 148 of this subchapter concerning individual health insurance coverage or short-term, limited-duration insurance, or one or more provisions of part 149 of this subchapter concerning group or individual health insurance coverage, providers and facilities, and providers of air ambulance services.

(2) Issuers as defined in § 144.103, and providers and facilities, each as defined in § 150.103 of this subchapter, in States described in paragraph (e)(1) of this section.

* * * * *

PART 148—REQUIREMENTS FOR THE INDIVIDUAL HEALTH INSURANCE MARKET

■ 9. The authority citation for part 148 is revised to read as follows:

Authority: 42 U.S.C. 300gg–21 through 300gg–63, 300gg–91, and 300gg–92, as amended.

■ 10. Section 148.101 is revised to read as follows:

§ 148.101 Basis and purpose.

This part implements sections 2722 through 2763 and 2791 and 2792 of the PHS Act. Its purpose is to guarantee the renewability of all coverage in the individual market. It also provides certain protections for mothers and newborns with respect to coverage for hospital stays in connection with childbirth and protects all individuals and family members who have, or seek, individual health insurance coverage from discrimination based on genetic information. It also sets forth reporting and disclosure requirements on health insurance issuers offering individual health insurance coverage or short-term, limited-duration insurance regarding the amount of direct and indirect compensation paid to agents or brokers associated with enrolling consumers in such coverage.

■ 11. Section 148.102 is amended by adding paragraph (a)(3) and revising paragraph (b) to read as follows:

§ 148.102 Scope and applicability date.

(a) * * *

(3) The requirements in § 148.410 that pertain to the disclosure and reporting of agent and broker compensation apply to health insurance issuers of individual health insurance coverage or short-term, limited-duration insurance, as defined in § 144.103 of this subchapter.

(b) *Applicability date.* Except as provided in § 148.124 (certificate of creditable coverage), § 148.170 (standards relating to benefits for mothers and newborns), § 148.180 (prohibition of health discrimination based on genetic information), and § 148.410 (reporting and disclosure of agent and broker compensation), the requirements of this part apply to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after June 30, 1997. Notwithstanding the previous sentence, the definition of ''short-term, limited-duration insurance'' in § 144.103 of this subchapter is applicable October 2, 2018.

■ 12. Add subpart F to read as follows:

Subpart F—Requirements Related to Reporting and Disclosure

§ 148.410 Reporting and disclosure of agent and broker compensation for individual health insurance coverage or short-term, limited-duration insurance.

(a) *In general.* A health insurance issuer offering individual health insurance coverage or short-term, limited-duration insurance must make disclosures to individuals, as described in paragraph (c) of this section, and provide reports to the Secretary, as described in paragraph (d) of this section, regarding direct and indirect compensation provided by the issuer to an agent or broker associated with enrolling individuals in such coverage.

(b) *Definitions.* The following definitions apply to this section:

(1) *Agent or broker* has the meaning given in § 155.20 of this subchapter.

(2) *Commission schedule* means an itemized list or table that provides the commission levels that are paid by an issuer for the sale, placement, or renewal of individual health insurance coverage or short-term, limited-duration insurance.

(3) *Direct compensation* means monetary amounts, including sales and base commissions, paid by an issuer that are attributable directly to the policy, certificate, or contract of insurance and that are paid to an agent or broker for the sale, placement, or renewal of individual health insurance coverage or short-term, limited-duration insurance.

(4) *Indirect compensation* means payments by an issuer attributable indirectly to a policy, certificate, or contract of insurance to agents, brokers, and other persons for items other than sales and base commissions (for example, service fees, consulting fees, finders' fees, profitability and persistency bonuses, awards, prizes, volume-based incentives, and non-monetary forms of compensation).

(5) *Policyholder* means the individual who purchases individual health insurance coverage or short-term, limited-duration insurance and who is responsible for the payment of premiums.

(c) *Disclosure requirements*—(1) *General requirements.* An issuer described in paragraph (a) of this section must disclose to a potential or existing policyholder the amount of direct and indirect compensation provided to an agent or broker associated with enrolling the policyholder in individual health insurance coverage or short-term, limited-duration insurance.

(2) *Disclosures related to initial enrollments in a plan.* An issuer must disclose to all potential or new policyholders the amount of direct and indirect compensation, including the commission schedule applicable to the potential or current plan selection by all potential or new policyholders and an explanation of qualifying thresholds for the payment of indirect compensation to an agent or broker (or, if an issuer does not use commission schedules, the information described in paragraph (c)(5) of this section). Such disclosure must be made—

(i) Prior to when a potential policyholder finalizes their plan selection; and

(ii) On any documentation confirming the initial enrollment, including enrollment documentation required by applicable State or Federal law or an initial enrollment package.

(3) *Disclosures related to renewals of enrollment in a plan.* For renewals of enrollment in a plan, an issuer must disclose to a policyholder the amount of direct and indirect compensation, including, but not limited to, the commission schedule applicable to a plan renewal and an explanation of qualifying thresholds for the payment of indirect compensation to an agent or broker (or, if an issuer does not use commission schedules, the information described in paragraph (c)(5) of this section). Such disclosure must accompany the plan renewal notice required in § 147.106(f) of this subchapter or § 148.122(i), if applicable.

(4) *Default disclosure.* In the absence of any documentation required by State law or the requirement for a notice of renewal of coverage, issuers must disclose the amount of direct and indirect compensation, including information typically itemized on a commission schedule used to determine agent or broker compensation as well as an explanation of qualifying thresholds for the payment of indirect compensation to an agent or broker, with the invoice for the first premium payment for the initial coverage term and for each renewal period.

(5) *Compensation information.* At a minimum, commission schedules or other documents that detail the applicable commission levels used to satisfy the requirements of this section must clearly specify commissions paid by the issuer to an agent or broker for the applicable plans for which the agent or broker has an appointment with the issuer, and distinguish between commission payments associated with new enrollments and such payments for renewed enrollments if the issuer differentiates compensation for those two types of enrollments. At a minimum, compensation information must also explain the qualifying thresholds for the payment of indirect compensation, such as bonuses, to an agent or broker. If an issuer of individual health insurance coverage or short-term, limited-duration insurance also offers direct or indirect compensation that is not captured by the commission schedule, the issuer must supplement the disclosure of the information on the commission schedule with additional documentation disclosing such other compensation.

(d) *Reporting requirements*—(1) *In general.* An issuer described in paragraph (a) of this section must report to the Secretary, in a form and manner prescribed by the Secretary, any direct and indirect compensation provided to an agent or broker associated with enrolling individuals in individual health insurance coverage and short-term, limited-duration insurance sold by the issuer.

(2) *Payments to intermediaries.* Reporting must reflect both compensation arrangements directly between the writing agent or broker and the issuer and compensation arrangements from the issuer to the writing agent or broker made through one or more intermediary organizations, for example, general line agencies or marketing organizations.

(3) *Reporting period.* The issuer must report, annually, on direct and indirect compensation paid to agents and brokers for individual health insurance coverage and short-term, limited-

duration insurance effective during the preceding calendar year.

(4) *Reporting deadline.* The report required under this paragraph (d) for a specific calendar year must be submitted to HHS no later than the last business day of July of the calendar year following the applicable reporting period.

(e) *Applicability.* The requirements of this section apply with respect to contracts executed on or after December 27, 2021, between an agent or broker and a health insurance issuer offering individual health insurance coverage or short-term, limited-duration insurance, as applicable. For the purpose of determining the date of contract execution, the execution of contractual addenda or revisions to the material terms of a pre-existing contract is deemed the execution of a new contract.

PART 149—SURPRISE BILLING AND TRANSPARENCY REQUIREMENTS

■ 13. The authority citation for part 149 continues to read as follows:

Authority: 42 U.S.C. 300gg–111 through 300gg–139, as amended.

■ 14. Section 149.10 is amended by revising paragraph (a) to read as follows:

§ 149.10 Basis and scope.

(a) *Basis.* This part implements Parts D and E of Title XXVII of the PHS Act, as well as section 106(a) of the No Surprises Act (Pub. L. 116–260, 134 Stat. 2852).

* * * * *

■ 15. Section 149.20 is amended by revising paragraph (a)(1) to read as follows:

§ 149.20 Applicability.

(a) * * *

(1) The requirements in subparts B, C, and D of this part apply to group health plans and health insurance issuers offering group or individual health insurance coverage (including grandfathered health plans as defined in § 147.140 of this subchapter), except as specified in paragraph (b) of this section.

* * * * *

■ 16. Section 149.30 is amended by adding the definitions of ''Air ambulance base'' and ''National Provider Identifier (NPI)'' in alphabetical order to read as follows:

§ 149.30 Definitions.

* * * * *

Air ambulance base means a site from which a provider of air ambulance services operates to provide air ambulance services.

* * * * *

National Provider Identifier (NPI) has the meaning given in 45 CFR 162.406.

* * * * *

■ 17. Add subpart C to read as follows:

Subpart C—Transparency and Reporting Requirements for the Group and Individual Health Insurance Markets

Sec.

149.210—149.220 [Reserved]

149.230 Reporting requirements regarding air ambulance services for plans and issuers.

§§ 149.210–149.220 [Reserved]

§ 149.230 Reporting requirements regarding air ambulance services for plans and issuers.

(a) *Reporting requirements*—(1) *General requirements.* A group health plan or health insurance issuer offering group or individual health insurance coverage must submit to the Secretary a report that includes the information described in paragraph (b) of this section for calendar years 2022 and 2023.

(2) *Timing and form of report.* The reports reflecting the data for each of the 2022 and 2023 calendar year reporting periods must be submitted to the Secretary by March 31, 2023, and by March 30, 2024, respectively, in the form and manner prescribed by the Secretary in guidance. The report must include data relevant to services furnished within the reporting period as well as data relevant to services for which payments were made within the reporting period.

(3) *Transfer of business.* A health insurance issuer offering group or individual health insurance coverage that acquires a line or block of business from another issuer offering group or individual health insurance coverage must submit the information required in paragraph (b) of this section on behalf of the acquired business, for the entire calendar year during which the acquisition took place. The reporting requirement in this paragraph (a)(3) also applies to the selling and acquiring issuers if a sale or transfer occurs as a result of issuers being merged, combined, spun off, affected by, or engaging in any similar transaction during a calendar year. To ensure completeness and timeliness of reporting of all relevant air ambulance services data, the Secretary may provide in guidance additional examples of what constitutes a transfer or acquisition for purposes of this paragraph (a)(3).

(b) *Required data elements.* The report required in paragraph (a) of this section must include the following data elements with respect to air ambulance services provided under a group health plan or group or individual health insurance coverage to participants, beneficiaries, or enrollees during the relevant reporting period, for each claim for air ambulance services that was received or paid for during the reporting period:

(1) Identifying information for any group health plan, plan sponsor, or issuer, and any entity reporting on behalf of the plan or issuer, as applicable.

(2) Market type for the plan or coverage (individual, large group, small group, self-insured plans offered by small employers, self-insured plans offered by large employers, and Federal Employees Health Benefits).

(3) Date of service.

(4) Billing NPI information.

(5) Current Procedural Terminology (CPT) code or Healthcare Common Procedure Coding System (HCPCS) code information.

(6) Transport information (including aircraft type, loaded miles, pick-up (origin zip code) and drop-off (destination zip code) locations, whether the transport was emergent or non-emergent, whether the transport was an inter-facility transport, and, to the extent this information is available to the plan or issuer, the service delivery model of the provider (such as government-sponsored (Federal, State, county, city/township, other municipal), public-private partnership, tribally-operated program in Alaska, hospital-owned or sponsored program, hospital independent partnership (hybrid) program, independent).

(7) Whether the provider had a contract with the group health plan or issuer of group or individual health insurance coverage, as applicable, to furnish air ambulance services under the plan or coverage, respectively.

(8) Claim adjudication information, including whether the claim was paid, denied, appealed; denial reason; and appeal outcome.

(9) Claim payment information, including submitted charges, amounts paid by each payor, and cost sharing amount, if applicable.

(c) *Special rules to prevent unnecessary duplication*—(1) *Special rule for insured group health plans.* To the extent coverage under a group health plan consists of group health insurance coverage, the plan satisfies the requirements of paragraph (a) of this section if the plan requires the health insurance issuer offering the coverage to report the information required by this section pursuant to a written agreement.

Accordingly, if a health insurance issuer and a group health plan sponsor enter into a written agreement under which the issuer agrees to report the information required under paragraph (a) of this section in compliance with this section, and the issuer fails to do so, then the issuer, but not the plan, violates the reporting requirements of paragraph (a) of this section.

(2) *Other contractual arrangements.* A group health plan or issuer of group or individual health insurance coverage may satisfy the requirements under paragraph (a) of this section by entering into a written agreement under which another party (such as a third-party administrator or health care claims clearinghouse) reports the information required in paragraph (a) of this section in compliance with this section. Notwithstanding the preceding sentence, if a group health plan or health insurance issuer chooses to enter into such an agreement and the party with which it contracts fails to provide the information in accordance with this section, the plan or issuer violates the reporting requirements of paragraph (a) of this section.

■ 18. Section 149.460 is added to read as follows:

§ 149.460 Reporting requirements regarding air ambulance services for providers of air ambulance services.

(a) *Reporting requirements*—(1) *General requirements.* A provider of air ambulance services must submit to the Secretary a report which includes the information described in paragraph (b) of this section for calendar years 2022 and 2023.

(2) *Timing and form of report.* The reports reflecting the data for each of the 2022 and 2023 calendar year reporting periods must be submitted to the Secretary by March 31, 2023, and by March 30, 2024, respectively, in the form and manner prescribed by the Secretary in guidance. The report must include data relevant to services furnished within the reporting period as well as data relevant to services for which payments were made within the reporting period.

(3) *Transfer of business.* A provider of air ambulance services that acquires a line or block of business from another provider of air ambulance services must submit the information required in paragraph (b) of this section on behalf of the acquired business, for the entire calendar year during which the acquisition took place. The reporting requirement in this paragraph (a)(3) also applies to the selling and acquiring providers of air ambulance services if a sale or transfer occurs as a result of providers of air ambulance services being merged, combined, spun off, affected by, or engaging in any similar transaction during a calendar year. To ensure completeness and timeliness of reporting of all relevant air ambulance services data, the Secretary may provide in guidance additional examples of what constitutes a transfer or acquisition for purposes of this paragraph (a)(3).

(b) *Required data elements.* The report required in paragraph (a) of this section must include the following data:

(1) *Corporate information.* Each provider of air ambulance services must report the following information about their company or organization:

(i) Identifying information for the company or organization.

(ii) Identifying information for the parent organization, owner, other proprietor, or sponsor of the provider of air ambulance services.

(iii) Information on all air ambulance bases owned, leased, operated, or used by the provider of air ambulance services.

(iv) NPIs registered to the provider of air ambulance services.

(2) *Air ambulance base information.* The following information must be reported separately for each air ambulance base owned, leased, or operated by the provider of air ambulance services:

(i) Location (City and State of the air ambulance base).

(ii) NPIs associated with the base.

(iii) Number, type, and other characteristics of the aircraft located on the base;

(iv) The number and type of staff.

(v) The number and type of air ambulance responses and transports per aircraft.

(vi) Total air ambulance responses per base and total air ambulance responses that did not result in transports.

(vii) Information regarding any contracts the provider has with group health plans or health insurance issuers to furnish air ambulance services associated with the base.

(viii) Air medical subscriptions or ambulance/emergency medical service membership programs associated with the base.

(ix) Non-direct payor contracts (such as waiver, rental, lease, or supplemental arrangements) with group health plans, health insurance issuers, or other entities, such as third-party administrators or provider networks, associated with the base.

(x) Service delivery model(s) (such as government-sponsored (Federal, State, county, city/township, other municipal), public-private partnership, tribally-operated program in Alaska, hospital-owned or sponsored program, hospital independent partnership (hybrid) program, independent), and whether the base shares operational costs with affiliated or sponsor organizations (such as a hospital or municipality), if applicable.

(xi) Whether the base operates ground ambulance services as well as air ambulance services.

(3) *Cost information.* The following information must be reported separately for each air ambulance base described in paragraph (b)(2) of this section, as well as at the regional or corporate level, if applicable:

(i) Labor costs.

(ii) Facility costs.

(iii) Vehicle costs.

(iv) Equipment and supplies costs.

(v) Vendor costs.

(vi) Overhead costs (including administrative and general expenses, insurance costs, and training costs).

(4) *Revenue information.* The following information must be reported separately for each air ambulance base described in paragraph (b)(2) of this section, as well as at the regional or corporate level, if applicable:

(i) Revenue from paid air ambulance transports, by payor type (including Medicare fee-for-service (FFS), Medicare Advantage, Medicaid, Veterans' Health Administration, TRICARE, Indian Health Service, group health plan, health insurance issuer, Federal Employees Health Benefits plan, Worker's Compensation, patient cost sharing, or patient self-pay).

(ii) Revenue from other sources including, but not limited to: Contracts with facilities such as hospitals, prisons, and nursing homes; revenue from emergency air medical services other than for transports (such as transportation of medical personnel or equipment); revenue from sub-contracted ambulance services; fees for standby events; payments from non-direct contracts such as waiver, rental, lease, and supplemental arrangements; air medical subscriptions and ambulance or emergency medical service membership programs; charitable donations and foundation funding; program-related investments; receipt of local taxes earmarked for emergency medical services; contract revenues from local governments in return for air ambulance services; enterprise funds and utility rates; sales of assets and services; bond or debt financing; State or local donation of vehicles or durable equipment; or funding grants or the provision of time-limited funding from a government

(including Federal, State, local, or other)).

(5) *Transport information.* The following information must be reported separately for each air ambulance transport provided during the reporting period:

(i) Date of service.

(ii) Billing NPI information.

(iii) Current Procedural Terminology (CPT) code or Healthcare Common Procedure Coding System (HCPCS) code information.

(iv) Air ambulance base.

(v) Loaded miles.

(vi) Pick-up (origin zip code) and drop-off (destination zip code) locations.

(vii) Duration of flight.

(viii) Whether the transport was emergent or non-emergent.

(ix) Whether the transport was a scene response, inter-facility, or other transport;

(x) Primary payor information, including payor type (such as Medicare FFS, Medicare Advantage, Medicaid, Veterans' Health Administration, TRICARE, Indian Health Service, group health plan, health insurance issuer, Federal Employees Health Benefits plan, Workers' Compensation, patient cost-sharing, or patient self-pay).

(xi) Information regarding any contracts the provider has with the group health plan or health insurance issuer, if and as applicable, to provide air ambulance services under the plan or coverage, respectively.

(xii) Payment methodology (such as base rate, mileage, and intervention or other charges), if applicable.

(xiii) Claim adjudication information, including whether the claim was paid, denied, appealed, denial reason, and appeal outcome, if applicable.

(xiv) Claim/transport payment information, including submitted charges, amount paid by payor other than patient, cost-sharing amount (if applicable), amount billed to patient, amount collected from patient, whether the bill was referred to collections, and payments from sources other than the primary payor.

PART 150—CMS ENFORCEMENT OF GROUP AND INDIVIDUAL INSURANCE MARKET, AND PROVIDER AND FACILITY REQUIREMENTS

■ 19. The authority citation for part 150 is revised to read as follows:

Authority: 42 U.S.C. 300gg through 300gg–63, 300gg–91, 300gg–92, 300gg–118, and 300gg–134, as amended.

■ 20. The heading for part 150 is revised to read as set forth above.

■ 21. Section 150.101 is amended by revising paragraphs (a) and (b)(2) and adding paragraph (b)(3) to read as follows:

§ 150.101 Basis and scope.

(a) *Basis.* This part implements CMS's enforcement authority under sections 2723, 2761, and 2799B–4 of the PHS Act, as well as section 106(e) of the No Surprises Act (Pub. L. 116–260, 134 Stat. 2852).

(b) * * *

(2) *Enforcement with respect to health insurance issuers.* The States have primary enforcement authority with respect to the requirements of Title XXVII of the PHS Act that apply to health insurance issuers offering coverage in the group or individual health insurance market. If CMS determines under subpart B of this part that a State is not substantially enforcing Title XXVII of the PHS Act, including the implementing regulations in parts 146, 147, 148, and 149 of this subchapter, CMS enforces them under subpart C of this part.

(3) *Enforcement with respect to providers and facilities.* The States have primary enforcement authority with respect to the requirements of Part E of Title XXVII of the PHS Act that apply to providers and facilities. If CMS determines under subpart B of this part that a State is not substantially enforcing Part E of Title XXVII of the PHS Act, and its implementing regulations in part 149 of this subchapter, CMS enforces them under subpart E of this part. CMS has primary enforcement authority with respect to the provisions of section 106(a) of the No Surprises Act, including the implementing regulations in part 149 of this subchapter, which CMS enforces under subpart E of this part.

■ 22. Section 150.103 is amended by—

■ a. Revising the introductory text;

■ b. Adding the definition of ''Facility'' in alphabetical order;

■ c. In the definition of ''Individual health insurance policy or individual policy,'' revising the introductory text and paragraph (2);

■ d. Revising the definition of ''PHS Act requirements;'' and

■ e. Adding the definitions ''Provider'' in alphabetical order.

The revisions and additions read as follows:

§ 150.103 Definitions.

The definitions that appear in parts 144 and 149 of this subchapter apply to this part unless stated otherwise. As used in this part:

* * * * *

Facility means a health care facility, an emergency department of a hospital, and an independent freestanding emergency department, as those terms are defined in § 149.30 of this subchapter, and any other facility subject to the requirements in Part E of Title XXVII of the PHS Act.

* * * * *

Individual health insurance policy or individual policy means the legal document or contract issued by an issuer to an individual that contains the conditions and terms of the insurance. Any association or trust arrangement that is not a group health plan as defined in § 144.103 of this subchapter or does not provide coverage in connection with one or more group health plans is individual health insurance coverage subject to the requirements of parts 147, 148, and 149 of this subchapter. The term ''individual health insurance policy'' includes a policy that is—

* * * * *

(2) Administered, or placed in a trust, and is not sold in connection with a group health plan subject to the provisions of parts 146, 147, and 149 of this subchapter.

PHS Act requirements means the requirements of Title XXVII of the PHS Act and its implementing regulations in parts 146, 147, 148, and 149 of this subchapter.

* * * * *

Provider means a physician or other health care provider as defined in § 149.30 of this subchapter, and a provider of air ambulance services as defined in § 149.30 of this subchapter.

* * * * *

■ 23. Revise the heading for subpart B to read as follows:

Subpart B—CMS Enforcement Processes for Determining Whether States Are Failing to Substantially Enforce PHS Act Requirements

■ 24. Section 150.201 is revised to read as follows:

§ 150.201 State enforcement.

Except as provided in subparts C and E of this part, each State enforces PHS Act requirements with respect to health insurance issuers that issue, sell, renew, or offer health insurance coverage in the State and with respect to providers and facilities that furnish items or services to individuals in the State.

■ 25. Section 150.203 is amended by revising the introductory text to read as follows:

§ 150.203 Circumstances requiring CMS enforcement.

CMS enforces PHS Act requirements to the extent warranted (as determined

by CMS) in any of the following circumstances:

* * * * *

■ 26. Section 150.205 is amended by revising paragraphs (d) and (e)(2) to read as follows:

§ 150.205 Sources of information triggering an investigation of State enforcement.

* * * * *

(d) Information from the governors; commissioners of insurance, or chief insurance regulatory officials, or officials responsible for regulating health maintenance organizations (HMOs) of the various States; and directors of public health or any other State department, agency, or board of the various States with applicable oversight authority regarding the status of their enforcement of PHS Act requirements.

(e) * * *

(2) Not pre-empted as provided in § 146.143 (relating to group market provisions) and § 148.210 (relating to individual market requirements) on the basis that they prevent the application of a PHS Act requirement.

* * * * *

■ 27. Section 150.211 is amended by revising paragraph (b) and adding paragraph (d) to read as follows:

§ 150.211 Notice to the State.

* * * * *

(b) If the alleged failure involves a health insurance issuer, the insurance commissioner or chief insurance regulatory official.

* * * * *

(d) If the alleged failure involves a provider or facility, the official responsible for regulating such provider or facility, if different from the officials listed in paragraphs (b) and (c) of this section.

■ 28. Section 150.221 is amended by revising paragraphs (a)(2) and (b) to read as follows:

§ 150.221 Transition to State enforcement.

(a) * * *

(2) Instructions to issuers, providers, and facilities, as applicable.

* * * * *

(b) CMS may also negotiate a process to ensure that, to the extent practicable, as permitted by law, and as applicable, its records documenting issuer, provider, and facility compliance and other relevant areas of CMS's enforcement operations are made available to the State regulatory authority that will assume enforcement responsibility.

■ 29. Section 150.303 is amended by revising the section heading and paragraphs (a) introductory text, (a)(2), and (c) to read as follows:

§ 150.303 Basis for initiating an investigation or examination.

(a) *Information.* Any information that indicates that any issuer may be failing to meet the PHS Act requirements or that any group health plan that is a non-Federal governmental plan may be failing to meet an applicable PHS Act requirement, may warrant an investigation or market conduct examination at CMS's discretion. An investigation or examination may include a review of any information CMS identifies as relevant to determine if a violation of the PHS Act has occurred. CMS may consider, but is not limited to considering, the following sources or types of information to determine if an investigation or market conduct examination is warranted:

* * *

(2) Reports from providers and facilities, State insurance departments, the National Association of Insurance Commissioners, and other Federal and State agencies.

* * *

(c) *Random and targeted investigations and market conduct examinations.* CMS may conduct random or targeted investigations or market conduct examinations to ensure that health insurance issuers offering health insurance coverage in the individual or group markets, and non-Federal governmental plans, are in compliance with applicable PHS Act requirements.

■ 30. Section 150.307 is amended by revising the introductory text and paragraphs (a) and (b) and adding paragraph (d) to read as follows:

§ 150.307 Notice to responsible entities.

If information received under § 150.303(a) indicates a potential violation, or if CMS selects an issuer or non-Federal governmental plan for investigation under § 150.303(c), CMS provides written notice to the responsible entity or entities identified under § 150.305. The notice does the following:

(a) Describes the information received under § 150.303(a) that gave rise to the investigation, or notifies the responsible entity that it was selected by CMS for investigation under § 150.303(c) and identifies the PHS Act requirements that are the focus of the investigation, as applicable.

(b) Provides the date by which the responsible entity or entities must respond and provide any documentation CMS identifies as relevant for purposes of an investigation, and by which the responsible entity or entities can provide additional information, including documentation of compliance as described in § 150.311, that, in the responsible entity's view, will aid CMS in evaluating the entity's compliance with the PHS Act requirements identified in the notice.

* * * * *

(d) States that CMS may require a plan of corrective action.

■ 31. Section 150.309 is revised to read as follows:

§ 150.309 Request for extension.

In circumstances in which an entity cannot prepare a response to CMS or provide the requested information by the deadline provided in the notice under § 150.307, the entity may submit a written request for an extension from CMS detailing the reason for the extension request and showing good cause. Examples of what CMS would consider good cause include, but are not limited to, when a responsible entity indicates it has limited staffing resources to prepare a response, or when a responsible entity requests clarification from CMS regarding its request for information. If CMS grants the extension, the responsible entity must respond to the notice within the time frame specified in CMS's letter granting the extension of time. Failure to respond within the initial deadline provided in the notice, or within any extended time frame, may result in CMS's imposition of a civil money penalty based upon the complaint or other information alleging or indicating a violation of PHS Act requirements.

■ 32. Section 150.311 is amended by revising paragraph (e) to read as follows:

§ 150.311 Responses to allegations of noncompliance.

* * * * *

(e) Documentation of the entity's issuance of conforming policies, certificates of insurance, plan documents, or amendments to policyholders or certificate holders before the issuance of the notice to the responsible entity or entities described in § 150.307 or § 150.313(e).

* * * * *

■ 33. Section 150.313 is amended by revising paragraphs (b), (c), and (e) and adding paragraphs (f), (g), (h), and (i) to read as follows:

§ 150.313 Market conduct examinations.

* * * * *

(b) *General.* If, based on the information described in § 150.303(a), CMS finds evidence that a responsible entity may be in violation of a PHS Act

requirement, or if CMS randomly selects an issuer or non-Federal governmental plan for examination under § 150.303(c), CMS may initiate a market conduct examination to ensure the entity is in compliance with applicable PHS Act requirements. CMS may conduct the examination either at the site of the issuer or other responsible entity, or a site CMS selects.

(c) *Appointment of examiners.* When CMS identifies an issue that warrants further review or randomly selects an issuer or non-Federal governmental plan for examination, CMS will appoint one or more examiners to perform the examination and instruct them as to the scope of the examination.

* * * * *

(e) *Initiation of examination.* CMS initiates an examination by providing written notice to the responsible entity. The notice does the following:

(1) Describes the information received under § 150.303(a) that served as the basis for CMS's determination that a market conduct examination is warranted, or notifies the responsible entity that it was selected by CMS for examination under § 150.303(c), as applicable;

(2) Describes the scope of the examination;

(3) Identifies the examiners;

(4) States that a civil money penalty may be assessed; and

(5) States that CMS may require a plan of corrective action.

(f) *Documentation requests; extension of time.* The responsible entity must forward to the site of examination any documentation CMS identifies as relevant for purposes of the examination. CMS will provide the responsible entity with an opportunity to provide additional information, including documentation of compliance as described in § 150.311, that the responsible entity believes will aid CMS in conducting the examination. This initial request will provide the responsible entity the date by which to forward the specified documentation to the location that CMS identifies. In circumstances in which an entity cannot prepare a response and provide the requested information to CMS by the deadline provided in the initial request, the entity may make a written request for an extension from CMS detailing the reason for the extension request and showing good cause. Examples of what CMS would consider good cause include, but are not limited to, when a responsible entity indicates it has limited staffing resources to prepare a response, or when a responsible entity requests clarification from CMS regarding its request for information. If CMS grants the extension, the responsible entity must respond to the documentation request within the time frame specified in CMS's letter granting the extension request. Failure to respond by the deadline provided in the initial request, or within the extended time frame, may result in CMS's imposition of a civil money penalty based upon the complaint or other information alleging or indicating a potential violation of applicable PHS Act requirements.

(g) *Field work.* CMS will review the documentation submitted under paragraph (f) of this section. During the course of the examination, CMS may request additional information or documentation and will specify in the request the time frame allotted for providing it. In circumstances in which an entity cannot prepare a response and provide the requested information to CMS within the allotted time frame, the entity may submit to CMS a written request for an extension from CMS detailing the reason for the extension request and showing good cause. Examples of what CMS would consider good cause include, but are not limited to, when a responsible entity indicates it has limited staffing resources to prepare a response, or when a responsible entity requests clarification from CMS regarding its request for information. If CMS grants the extension, the responsible entity must respond to the documentation request within the time frame specified in CMS's letter granting the extension request. Failure to respond and provide such additional documentation to CMS within the allotted time frame, or within an extended time frame as granted by CMS, may result in CMS's imposition of a civil money penalty based upon the complaint or other information alleging or indicating a potential violation of applicable PHS Act requirements. During the course of the examination, upon review of the documentation submitted, CMS may identify and notify the responsible entity of any potential PHS Act violations and provide the responsible entity an opportunity to respond with additional information, including documentation of compliance as described in § 150.311, that the responsible entity believes demonstrates compliance or will otherwise aid CMS in conducting the examination.

(h) *Draft report of market conduct examination*—(1) *Contents of report.* CMS will, upon completion of the examination, provide to the responsible entity a draft examination report that will include the scope of the examination, any findings of a PHS Act violation, and any proposed actions the responsible entity would need to take to correct such violation.

(2) *Response from the responsible entity.* With respect to each examination issue identified in the draft examination report, the responsible entity may:

(i) Concur, in whole or in part, with CMS's position(s) as outlined in the draft examination report, explaining any corrective actions that have been or will be implemented; or

(ii) Dispute, in whole or in part, CMS's position(s), clearly outlining the basis for its dispute and submitting illustrative examples where appropriate.

(i) *Final report of market conduct examination.* Upon receipt of a response from the responsible entity under paragraph (h)(2) of this section, CMS will provide to the responsible entity a final examination report containing CMS's findings relevant to each examination issue that will consist of one or more of the following:

(1) CMS's concurrence with the responsible entity's position;

(2) CMS's disagreement with the responsible entity's position;

(3) CMS's determination that any corrective actions implemented by the responsible entity sufficiently addressed the identified PHS Act violation;

(4) CMS's determination that the corrective actions implemented by the responsible entity have not sufficiently addressed the identified PHS Act violation, and information on any further corrective actions deemed necessary by CMS; or

(5) Notice to the responsible entity that has disagreed with a CMS finding and that has not undertaken corrective actions that there exists a violation of applicable PHS Act requirements and any actions the responsible entity must take prospectively to correct such violation.

■ 34. Section 150.319 is amended by revising paragraph (a)(1) to read as follows:

§ 150.319 Determining the amount of the penalty—mitigating circumstances.

* * * * *

(a) * * *

(1) Before receipt of the notice issued under § 150.307 or § 150.313(e), implemented and followed a compliance plan as described in § 150.311(f).

* * * * *

■ 35. Section 150.321 is amended by adding paragraph (d) to read as follows:

§ 150.321 Determining the amount of penalty—aggravating circumstances.

* * * * *

(d) The entity fails to cooperate with a CMS investigation or market conduct examination.

■ 36. Section 150.325 is revised to read as follows:

§ 150.325 Settlement authority.

Nothing in §§ 150.315 through 150.323 limits the authority of CMS to settle any issue or case described in the notice furnished in accordance with § 150.307 or § 150.313(e), or to compromise on any penalty provided for in §§ 150.315 through 150.323.

■ 37. Section § 150.401 is amended by revising the definition of ''Respondent'' to read as follows:

§ 150.401 Definitions.

* * * * *

Respondent means an entity that received a notice of proposed assessment of a civil money penalty issued pursuant to § 150.343 or § 150.515.

■ 38. Section 150.405 is amended by revising paragraph (a) to read as follows:

§ 150.405 Filing of request for hearing.

(a) A respondent has a right to a hearing before an ALJ if it files a request for hearing that complies with § 150.407(a), within 30 days after the date of issuance of either CMS's notice of proposed determination under § 150.343 or § 150.515, or notice that an alternative dispute resolution process has terminated. The request for hearing must be addressed as instructed in the notice of proposed determination. ''Date of issuance'' is five (5) days after the filing date, unless there is a showing that the document was received earlier.

* * * * *

■ 39. Section 150.417 is amended by revising paragraph (b)(1) to read as follows:

§ 150.417 Issues to be heard and decided by ALJ.

* * * * *

(b) * * *

(1) Applies the factors that are identified in § 150.317 or § 150.513.

* * * * *

■ 40. Section 150.445 is amended by revising paragraphs (g), (h), and (j) to read as follows:

§ 150.445 Evidence.

* * * * *

(g) Evidence of acts other than those at issue in the instant case is admissible in determining the amount of any civil money penalty if those acts are used under § 150.317, § 150.323, or § 150.513 to consider the entity's prior record of compliance, to show motive, opportunity, intent, knowledge, preparation, identity, or lack of mistake. This evidence is admissible regardless of whether the acts occurred during the statute of limitations period applicable to the acts that constitute the basis for liability in the case and regardless of whether CMS's notice sent in accordance with § 150.307, § 150.313(e), § 150.343, § 150.505, or § 150.515 referred to them.

(h) The ALJ will permit the parties to introduce rebuttal witnesses and evidence, and to cross-examine witnesses.

* * * * *

(j) The ALJ may not consider evidence regarding the willingness and ability to enter into and successfully complete a corrective action plan when that evidence pertains to matters occurring after CMS's notice under § 150.307, § 150.313(e), or § 150.505.

■ 41. Section 150.455 is amended by adding paragraph (b)(9) to read as follows:

§ 150.455 Sanctions.

* * * * *

(b) * * *

(9) In the case of a violation of part 149 of this subchapter, ordering the party or attorney to pay attorneys' fees and other costs caused by the failure or misconduct.

■ 42. Add subpart E to read as follows:

Subpart E—CMS Enforcement with Respect to Providers and Facilities

Sec.

Subpart E—CMS Enforcement with Respect to Providers and Facilities

§ 150.501 General rule regarding the imposition of civil money penalties.

(a) If any provider or facility that is subject to CMS's enforcement authority under § 150.101(b)(3) fails to comply with a requirement in Title XXVII, Part E of the PHS Act, such provider or facility may be subject to a civil money penalty as described in this subpart.

(b) If any provider of air ambulance services fails to timely submit the information required in section 106(a) of the No Surprises Act, such provider may be subject to a civil money penalty as described in this subpart.

§ 150.503 Basis for initiating an investigation; injunctive relief.

(a) *Basis for investigation.* Any information that indicates that any provider or facility may be failing to meet the PHS Act requirements or submit the information required in section 106(a) of the No Surprises Act may warrant an investigation at CMS's discretion. An investigation may include a review of any information CMS identifies as relevant to determine if a violation of the PHS Act or section 106(a) of the No Surprises Act has occurred. CMS may consider, but is not limited to considering, the following sources or types of information to determine if an investigation is warranted:

(1) Complaints.

(2) Reports from plans or issuers, State insurance departments, State health departments, medical boards, the National Association of Insurance Commissioners, and any other Federal or State agencies.

(3) Any other information that indicates potential noncompliance with PHS Act requirements or section 106(a) of the No Surprises Act.

(b) *Who may file a complaint.* Any aggrieved entity or individual, or any entity or personal representative acting on that individual or entity's behalf, may file a complaint with CMS if he or she believes that a right to which the aggrieved individual or entity is entitled under PHS Act requirements is being, or has been, denied or abridged as a result of any action or failure to act on the part of a provider or facility.

(c) *Random and targeted investigations.* CMS may conduct random or targeted investigations to ensure that providers and facilities are in compliance with applicable PHS Act requirements and section 106(a) of the No Surprises Act.

(d) *Injunctive relief.* Whenever CMS has reason to believe that any provider or facility has engaged, is engaging, or is about to engage in any activity which makes such provider or facility subject to a civil money penalty under this subpart, CMS may bring an action in an appropriate district court of the United States (or, if applicable, a United States court of any territory) to enjoin such activity, or to enjoin the provider or facility from concealing, removing, encumbering, or disposing of assets which may be required in order to pay a civil money penalty if any such penalty were to be imposed or to seek other appropriate relief.

§ 150.505 Notice to providers or facilities.

If CMS receives information under § 150.503(a) that indicates a potential violation of the PHS Act or section 106(a) of the No Surprises Act, or if CMS selects a provider or facility for investigation under § 150.503(c), CMS provides written notice to the provider or facility. The notice does the following:

(a) Describes the information received under § 150.503(a) that gives rise to the potential violation, notifies the provider or facility that it was selected by CMS for investigation under § 150.503(c) and the PHS Act requirements that are the focus of the investigation, or describes the data that was required under section 106(a) of the No Surprises Act and the implementing regulations in part 149 of this subchapter but not submitted by a provider of air ambulance services, as applicable.

(b) Provides the date by which the provider or facility must respond and forward any documentation CMS identifies as relevant for purposes of an investigation, including overdue data regarding air ambulance services, and can provide additional information, including documentation of compliance as described in § 150.509 that, in the provider or facility's view, will aid CMS in evaluating the entity's compliance with the PHS Act or No Surprises Act requirements identified in the notice.

(c) States that a civil money penalty may be assessed should the entity be found to be out of compliance with applicable PHS Act requirements or section 106(a) of the No Surprises Act.

(d) States that CMS may require a plan of corrective action.

§ 150.507 Request for extension.

In circumstances in which a provider or facility cannot prepare a response to CMS or provide the requested information by the deadline provided in the notice under § 150.505, the provider or facility may make a written request for an extension from CMS detailing the reason for the extension request and showing good cause. Examples of what CMS would consider good cause include, but are not limited to, when a responsible entity indicates it has limited staffing resources to prepare a response, or when a responsible entity requests clarification from CMS regarding its request for information. If CMS grants the extension, the provider or facility must respond to the notice within the time frame specified in CMS's letter granting the extension of time. Failure to respond within the initial deadline provided in the notice, or within the extended time frame, may result in CMS's imposition of a civil money penalty based upon the complaint or other information alleging or indicating a violation of PHS Act requirements or section 106(a) of the No Surprises Act.

§ 150.509 Responses to allegations of noncompliance.

In determining whether to impose a civil money penalty, CMS reviews and considers documentation provided in any complaint or other information, as well as any additional information provided by the provider or facility to demonstrate that it has complied with relevant requirements. The following are examples of documentation that a provider or facility may submit for CMS's consideration in determining whether a civil money penalty should be assessed and the amount of any civil money penalty:

(a) Any documentation indicating a provider or facility complied with the requirements in part 149 of this subchapter, including but not limited to claims, medical bills, notice and consent forms, disclosures, data related to air ambulance services, or any other documents if those documents form the basis of a complaint or allegation of noncompliance, or the basis for the provider or facility to refute the complaint or allegation.

(b) Any other evidence that refutes an allegation of noncompliance.

(c) Evidence that the provider or facility did not know, and exercising due diligence could not have known, of the violation, and, if applicable, that the provider or facility undertook a corrective action, such as withdrawing the bill that was in violation and reimbursing the health plan or participant, beneficiary, or enrollee for any payment received in response to the bill that was withdrawn.

(d) Evidence documenting the development and implementation of internal policies and procedures by a provider or facility to ensure compliance with PHS Act requirements and section 106(a) of the No Surprises Act, as applicable. Those policies and procedures may include or consist of a voluntary compliance program. Any such program must do the following:

(1) Effectively articulate and demonstrate the fundamental mission of compliance and the provider or facility's commitment to the compliance process.

(2) Include the name of an individual responsible for compliance.

(3) Describe an effective monitoring process designed to identify practices that do not comply with PHS Act requirements and section 106(a) of the No Surprises Act, as applicable, and to provide reasonable assurances that noncompliant practices are detected in a timely manner.

(4) Address procedures to improve internal policies when noncompliant practices are identified.

(e) Evidence documenting the provider's or facility's record of previous compliance with PHS Act requirements and section 106(a) of the No Surprises Act, as applicable.

(f) Evidence documenting a provider of air ambulance services' good faith efforts to submit missing information that such providers are required to submit pursuant to § 149.460 of this chapter. This must include the submission and implementation of a corrective action plan that does the following:

(1) Identifies the cause underlying the submission of incomplete data and effectively articulates and demonstrates the measures that will be taken to submit complete data;

(2) Provides the timeline for submitting complete data;

(3) Provides the name of the individual in the organization responsible for overseeing the corrective actions and submitting complete data; and

(4) Addresses procedures to improve internal policies to ensure that incomplete data reports are identified and completed prior to submission for future reporting periods.

§ 150.511 Liability for penalties.

(a) No action under this part will be entertained unless commenced within 6 years from the date when the claim was presented, the request for payment was made, or the violation occurred.

(b) Under this part, a principal is liable for penalties for the actions of his or her agent acting within the scope of his or her agency. This paragraph (b) does not limit the underlying liability of the agent.

§ 150.513 Amount of penalty.

(a) *Maximum amount.* (1) If a provider or facility is found to be in violation of a PHS Act requirement, CMS may impose a civil money penalty in an amount not to exceed $10,000 per violation, adjusted annually under 45 CFR part 102. Penalties imposed under this part are in addition to any other penalties prescribed or allowed by law.

(2) If a provider of air ambulance services is found to be in violation of section 106(a) of the No Surprises Act, CMS may impose a civil money penalty in an amount not to exceed $10,000 per year of violation, adjusted annually under 45 CFR part 102. Penalties imposed under this part are in addition

to any other penalties prescribed or allowed by law.

(b) *Factors.* Except as otherwise provided in this part, in determining the amount of any penalty in accordance with this part, CMS will consider the following factors—

(1) The nature of violations and circumstances under which they were presented.

(2) The degree of culpability of the provider or facility against which a civil money penalty is proposed.

(3) The provider or facility's history of prior violations, including whether at any time before determination of the current violation or violations, CMS or any State found the provider or facility liable for civil or administrative sanctions in connection with a violation of PHS Act requirements or section 106(a) of the No Surprises Act, as applicable.

(4) The frequency of the violation, taking into consideration whether any violation is an isolated occurrence, represents a pattern, or is widespread.

(5) The level of financial and other impacts on affected individuals.

(6) Such other matters as justice may require.

(c) *Mitigating circumstances.* For every violation subject to a civil money penalty, if there are substantial or several mitigating circumstances, the aggregate amount of the penalty is set at an amount sufficiently below the maximum permitted in paragraph (a) of this section to reflect that fact. As guidelines for taking into account the factors listed in paragraph (b) of this section, CMS considers the following as mitigating circumstances:

(1) Before receipt of the notice issued under § 150.505, the provider or facility implemented and followed a compliance plan as described in § 150.509.

(2) There were no previous complaints of noncompliance against the provider or facility.

(3) In the case of a provider or facility responsible for an erroneous bill, the provider or facility made adjustments to business practices to come into compliance with PHS Act requirements, so that the following occur:

(i) The provider or facility identified all participants, beneficiaries and enrollees who are or were wrongly billed.

(ii) The provider or facility withdrew the bill or reimbursed the affected individuals who were wrongly billed so that, to the extent practicable, the affected individuals are in the same position that they would have been in had the violation not occurred.

(iii) The provider or facility completed the adjustments to business practices in a timely manner.

(4) The provider or facility demonstrated that the violation is an isolated occurrence.

(d) *Aggravating circumstances.* For every violation subject to a civil money penalty, if there are substantial or several aggravating circumstances, CMS sets the aggregate amount of the penalty at an amount sufficiently close to or at the maximum permitted by this section to reflect that fact. CMS considers the following circumstances to be aggravating circumstances:

(1) The frequency of violation indicates a pattern of widespread occurrence.

(2) The violation(s) resulted in significant financial and other impacts on the average affected individual.

(3) The provider or facility does not provide documentation showing that substantially all of the violations were corrected.

(e) *Waiver of the penalty.* CMS shall waive a civil money penalty if:

(1) The provider or facility does not knowingly violate, and exercising due diligence should not have reasonably known it violated, part 149 of this subchapter with respect to a participant, beneficiary, or enrollee, and such provider or facility withdraws the bill that was in violation of such provision and reimburses the group health plan, health insurance issuer, or affected individual, as applicable, in an amount equal to the difference between the amount billed and the amount allowed to be billed, plus interest at the rate established annually by the Secretary of the Treasury pursuant to 31 U.S.C. 3717, within 30 days of the violation; or

(2) In the case of a provider of air ambulance services that submits only part of the information required in § 149.460 of this subchapter, if the provider demonstrates a good faith effort in working with the Secretary to submit any missing information.

(f) *Settlement authority.* Nothing in this section limits the authority of CMS to settle any issue or case described in the notice furnished in accordance with § 150.505 or to compromise on any penalty provided for in § 150.515.

(g) *Hardship exemption.* The Secretary may establish a hardship exemption to the penalties under this subpart.

§ 150.515 Notice of proposed determination.

(a) If CMS proposes a penalty, in accordance with this subpart, CMS will serve on the provider or facility, in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure, written notice of CMS's intent to impose a penalty. The notice will include:

(1) A description of the PHS Act requirements or the No Surprises Act requirements that CMS has determined the provider or facility violated.

(2) A description of any complaint or other information upon which CMS based its investigation, including the basis for determining the number of violations.

(3) The amount of the proposed penalty as of the date of the notice.

(4) Any circumstances described in § 150.513 that were considered when determining the amount of the proposed penalty.

(5) Instructions for responding to the notice, including:

(i) A specific statement of the provider or facility's right to a hearing; and

(ii) A statement that failure to request a hearing within 30 days of receipt of the notice permits the imposition of the proposed penalty without right of appeal in accordance with § 150.519.

(b) [Reserved]

§ 150.517 Hearing.

(a) The provisions found in §§ 150.401 through 150.457 shall apply to a hearing conducted under this subpart.

(b) Any provider or facility upon which CMS has proposed the imposition of a penalty may appeal such proposed penalty by requesting a hearing before an ALJ in accordance with § 150.405. The form and content of the request for a hearing must comply with § 150.407.

(c) If the provider or facility fails, within the time period permitted, to exercise the right to a hearing under this section, the proposed penalty becomes final.

§ 150.519 Failure to request a hearing.

If the provider or facility does not request a hearing within 30 days of the issuance of the notice described in § 150.515, or show good cause, as determined under § 150.405(b), for failing to timely exercise its right to a hearing, CMS may assess the proposed civil money penalty. CMS will notify the provider or facility in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure of any penalty that has been assessed and of the means by which the provider or facility may satisfy the judgment. The provider or facility has no right to appeal a penalty with respect to which it has not requested a hearing in accordance with § 150.405.

§ 150.521 Collateral estoppel.

(a) Where a final decision pertaining to the provider or facility's liability for acts that violate this part has been rendered in any proceeding in which the provider or facility was a party and had an opportunity to be heard, the provider or facility shall be bound by such decision in any proceeding under this part.

(b) In a proceeding under this part, a provider or facility is estopped from denying the essential elements of a criminal offense if the proceeding:

(1) Is against a provider or facility which has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal crime charging fraud or false statements; and

(2) Involves the same transactions as in the criminal action.

§ 150.523 Judicial review.

(a) Any provider or facility against which a final decision imposing a civil money penalty is entered by the ALJ pursuant to this subpart may obtain review in the United States Court of Appeals for the circuit in which the person resides, or where the violation occurred, by filing in such court (within 60 days following the date on which such decision becomes final) a written petition requesting the decision be modified or set aside. Such review will be conducted pursuant to section 1128A(e) of the Social Security Act.

(b) A provider or facility must exhaust all administrative appeal procedures established under this part before the provider or facility may bring an action in Federal court, as provided in section 1128A(e) of the Social Security Act, concerning any penalty imposed pursuant to this part.

(c) Administrative remedies are exhausted on the date an ALJ's initial decision becomes final under § 150.453, or the date of the Administrator's decision affirming, reversing, modifying, or remanding the ALJ's initial decision under § 150.457, as applicable.

(d) After the clerk of the court transmits a copy of the petition specified in paragraph (a) of this section to the Secretary, the Secretary will file in the Court the record in the proceeding as provided in section 2112 of Title 28, United States Code.

§ 150.525 Notice to other agencies.

Whenever a penalty becomes final, the Secretary will notify the following organizations and entities about such action and the reasons for it: The appropriate State or local medical or professional association, the State Department of Health, the appropriate State or local licensing agency or organization, and the appropriate utilization and quality control peer review organization. The Secretary may additionally notify the following entities, as appropriate: The State Department of Insurance or similar agency, the State Attorney General, the Secretary of Labor, the Secretary of the Treasury, or the Director of the U.S. Office of Personnel Management.

[FR Doc. 2021–19797 Filed 9–10–21; 5:00 pm]

BILLING CODE 6523–63–P; 4120–01–P; 4830–01–P; 4510–29–P

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Thursday, September 16, 2021

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