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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 208

[CIS No. 2671–20; DHS Docket No. USCIS–2020–0017]

RIN 1615–AC59

Asylum Interview Interpreter Requirement Modification Due to COVID–19

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Temporary final rule; extension.

SUMMARY: The Department of Homeland Security (DHS) is extending for a second time the effective date (for 180 days) of its temporary final rule that modified certain regulatory requirements to help ensure that USCIS may continue with affirmative asylum adjudications during the COVID–19 pandemic. This rule also provides that if a USCIS interpreter is unavailable, USCIS will either reschedule the interview and attribute the interview delay to USCIS for the purposes of the asylum employment authorization regulation, or USCIS may, in its discretion, allow the applicant to provide an interpreter.

DATES: This temporary final rule is effective from September 20, 2021, through March 16, 2022. As of September 20, 2021, the expiration date of the temporary final rule published at 85 FR 59655 (Sept. 23, 2020), which was extended at 86 FR 15072 (Mar. 22, 2021), is further extended from September 20, 2021, to March 16, 2022.

FOR FURTHER INFORMATION CONTACT: Andria Strano, Acting Chief, Division of Humanitarian Affairs, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20588–0009; telephone (240) 721–3000 (not a toll-free call).

Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Legal Authority To Issue This Rule and Other Background

A. Legal Authority

The Secretary of Homeland Security (Secretary) takes this action pursuant to his authorities concerning asylum determinations. The Homeland Security Act of 2002 (HSA), Public Law 107–296, as amended, transferred many functions related to the execution of Federal immigration law to the newly created DHS. The HSA amended the Immigration and Nationality Act (INA or the Act), charging the Secretary ''with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens,'' INA 103(a)(1), 8 U.S.C. 1103(a)(1), and granted the Secretary the power to take all actions ''necessary for carrying out'' the immigration laws, including the INA, *id.* 1103(a)(3). The HSA also transferred to DHS responsibility for affirmative asylum applications made outside the removal context. *See* 6 U.S.C. 271(b)(3). That authority has been delegated within DHS to U.S. Citizenship and Immigration Services (USCIS). USCIS asylum officers determine, in the first instance, whether a noncitizen's affirmative asylum application should be granted. *See* 8 CFR 208.4(b), 208.9. With limited exception, the Department of Justice Executive Office for Immigration Review has exclusive authority to adjudicate asylum applications filed by noncitizens who are in removal proceedings. *See* INA 103(g), 240; 8 U.S.C. 1103(g), 1229a. This broad division of functions and authorities informs the background of this rule.

B. Legal Framework for Asylum

Asylum is a discretionary benefit that generally can be granted to eligible noncitizens who are physically present or who arrive in the United States, irrespective of their status, subject to the requirements in section 208 of the INA, 8 U.S.C. 1158, and implementing regulations, *see* 8 CFR parts 208, 1208.

Section 208(d)(5) of the INA, 8 U.S.C. 1158(d)(5), imposes several mandates and procedural requirements for the consideration of asylum applications. Congress also specified that the Attorney General and Secretary of Homeland Security ''may provide by regulation for any other conditions or limitations on the consideration of an application for asylum,'' so long as those limitations are ''not inconsistent with this chapter.'' INA208(d)(5)(B), 8 U.S.C. 1158(d)(5)(B). Thus, the current statutory framework leaves the Attorney General (and, after the HSA, also the Secretary) significant discretion to regulate consideration of asylum applications. USCIS regulations promulgated under this authority set agency procedures for asylum interviews, and require that applicants unable to communicate in English ''must provide, at no expense to the Service, a competent interpreter fluent in both English and the applicant's native language or any other language in which the applicant is fluent.'' 8 CFR 208.9(g). This requirement means that all asylum applicants who cannot communicate in English must bring an interpreter to their interview. Doing so, as required by the regulation, poses a serious health risk because of the COVID–19 pandemic.

Accordingly, this temporary rule extends the temporary final rule published at 85 FR 59655 for a second time to continue to mitigate the spread of COVID–19 by seeking to slow the transmission and spread of the disease during asylum interviews before USCIS asylum officers. To that end, this temporary rule will extend the requirement in certain instances allowing noncitizens interviewed for this discretionary asylum benefit to use USCIS-provided interpreters during interviews. This temporary rule also provides that if a USCIS interpreter is unavailable, USCIS will either reschedule the interview and attribute the interview delay to USCIS for the purposes of employment authorization under 8 CFR 208.7, or USCIS may, in its discretion, allow the applicant to provide an interpreter.

C. The COVID–19 Pandemic

On January 31, 2020, the Secretary of Health and Human Services (HHS) declared a public health emergency under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID–19, which is caused

by the SARS–CoV–2 virus.[1] On February 24, 2021, the President issued a continuation of the National Emergency concerning the COVID–19 pandemic.[2] Effective July 20, 2021, HHS renewed the determination that ''a public health emergency exists and has existed since January 27, 2020 nationwide.'' [3] A more detailed background discussion of the COVID–19 pandemic is found in the original temporary rule, as well as in the first extension of this rule, and USCIS incorporates the discussions of the pandemic into this extension with modification. 85 FR 59655; 85 FR 15072.

Since publication of the original temporary rule and first extension, several variants of the virus that causes COVID–19 have been, and continue to be, reported in the United States.[4] Evidence suggests that these variants may spread more quickly and easily than others and at least one variant may be associated with an increased risk of death.[5] The COVID–19 Delta variant was first found in India in October 2020.[6] Cases were discovered in the United States in late January 2021, and Delta has quickly become the predominant virus strain in the United States.[7] It was labeled a Variant of Concern (VOC) by the HHS SARS–CoV–2 Interagency Group (SIG), which defines VOCs as those with evidence of increased transmissibility and severe disease, reduced effectiveness of treatments or vaccines, and diagnostic detection failures.[8]

As of September 9, 2021, there have been approximately 222,406,582 cases of COVID–19 identified globally, resulting in approximately 4,592,934 deaths. Approximately 40,152,521 cases have been identified in the United States, with about 1,297,399 new cases identified in the 7 days preceding September 5th, and approximately 646,131 reported deaths due to the disease.[9] In the week preceding September 5th, the United States was the country that reported the highest number of new cases, with a 38 percent increase.[10]

On August 23, 2021, the U.S. Food and Drug Administration (FDA) granted approval for the Pfizer-BioNTech COVID–19 vaccine for individuals 16 years and older, now marketed as Comirnaty.[11] Prior to this, the FDA had issued emergency use authorizations (EUAs) for three COVID–19 vaccines, including the Pfizer-BioNTech vaccine.[12] The two other vaccines that continue to be authorized for emergency use are produced by Moderna and Janssen.[13] The Pfizer-BioNTech and Moderna vaccines require two doses to be effective at preventing COVID–19 illness.[14] The Janssen vaccine is a single dose.[15] As of September 9, 2021, approximately 177,433,044 people in the United States had completed a COVID–19 vaccination regimen.[16] While the vaccine is now widely accessible in the United States, geographic data indicates a wide disparity in the percentages of fully vaccinated individuals by state, ranging from 39.6 percent in Alabama to 68.4 percent in Vermont, not taking into account United States territories.[17] Health experts still do not know what percentage of people in the U.S. will need to be vaccinated before enough individuals in the community are protected to meaningfully reduce the spread of the disease from person to person, how effective the vaccines are against new variants, and how long the vaccines protect people.[18] Furthermore, hospitalization and mechanical respiratory support may still be required in severe cases of COVID–19 illness, irrespective of vaccination status.[19]

Ongoing research demonstrates that while there is high vaccine effectiveness, fully vaccinated individuals continue to experience breakthrough COVID–19 infections and may be either symptomatic or asymptomatic.[20] As of April 30, 2021, approximately 10,262 breakthrough infections were reported from 46 U.S. states and territories.[21] This is likely a substantial undercount of cases, as CDC states that the current national surveillance system relies on voluntary reporting and data are only available for a small segment of reported cases.[22] The data are further limited because on May 01, 2021, the CDC transitioned from tracking all reported COVID–19 vaccine breakthrough infections to only those among patients who are hospitalized or die.[23] As of August 30, 2021, CDC data from 49 U.S. states and territories indicates 12,908 patients with patients with SARS–CoV–2 breakthrough infections were hospitalized or died.[24] Testing is available to confirm suspected cases of COVID–19 infection. At present, the time it takes to receive

[1] HHS, Determination that a Public Health Emergency Exists (Jan. 31, 2020), *https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx.*

[2] Notice on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID–19) Pandemic, 86 FR 11599 (Feb. 26, 2021); Proclamation 9994 of March 13, 2020, Declaring a National Emergency Concerning the Coronavirus Disease (COVID–19) Outbreak, 85 FR 15337 (Mar. 18, 2020).

[3] HHS, Renewal of Determination that a Public Health Emergency Exists (July 19, 2021), *https://www.phe.gov/emergency/news/healthactions/phe/Pages/COVID-19July2021.aspx.*

[4] Centers for Disease Control and Prevention (CDC), SARS–CoV–2 Variant Classifications and Definitions (Aug. 3, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/variants/variant-info.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fvariant-surveillance%2Fvariant-info.html.*

[5] CDC, Variants of the Virus (July 29, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/variants/variant.html.*

[6] Cov-Lineages, Global Lineage Report: B.1.617.2 (May 19, 2021); CDC, SARS–CoV–2 Variant Classifications and Definitions (Aug. 03, 2021); CDC, Delta Variant: What We Know About the Science (Aug. 06, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html.*

[7] Id.

[8] Id.

[9] World Health Organization (WHO), Weekly epidemiological update—7 September 2021 (Sept. 07, 2021), *available at https://www.who.int/publications/m/item/weekly-epidemiological-update-on-covid-19--7-september-2021;* WHO, WHO Coronavirus (COVID–19) Dashboard (Sept. 09, 2021), *https://covid19.who.int/.*

[10] WHO, Weekly epidemiological update.

[11] FDA, FDA Approves First COVID–19 Vaccine (Aug. 23, 2021), *https://www.fda.gov/news-events/press-announcements/fda-approves-first-covid-19-vaccine.*

[12] FDA, Learn More About COVID–19 Vaccines From the FDA (content current as of July 12, 2021), *https://www.fda.gov/consumers/consumer-updates/learn-more-about-covid-19-vaccines-fda.*

[13] *Id.* Janssen Biotech Inc., the manufacturer of the third vaccine granted an EUA by the FDA, is a Janssen Pharmaceutical Company of Johnson & Johnson.

[14] CDC, Moderna COVID–19 Vaccine Overview and Safety (updated June 11, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/Moderna.html;* CDC, Pfizer-BioNTech COVID–19 Vaccine Overview and Safety (updated June 24, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/Pfizer-BioNTech.html.*

[15] CDC, Johnson & Johnson's Janssen COVID–19 Vaccine Overview and Safety (updated June 23, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/janssen.html.*

[16] CDC, COVID Data Tracker—COVID–19 Vaccinations in the United States (Sept. 09, 2021), *https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-total-admin-rate-total.*

[17] Id.

[18] CDC, Key Things to Know About COVID–19 Vaccines (updated June 25, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fvaccines%2F8-things.html.*

[19] National Insitutes of Health (NIH), COVID–19 Treatment Guidelines: Care of Critically Ill Adult Patients with COVID–19 (July 08, 2021), *https://www.covid19treatmentguidelines.nih.gov/management/critical-care/summary-recommendations/.*

[20] CDC, Morbidity and Mortality Weekly Report (MMWR): COVID–19 Vaccine Breakthrough Infections Reported to CDC—United States, January 1–April 30, 2021 (May 28, 2021), *https://www.cdc.gov/mmwr/volumes/70/wr/mm7021e3.htm.*

[21] Id.

[22] Id.

[23] Id.

[24] CDC, COVID–19 Vaccine Breakthrough Case Investigation and Reporting (Sept. 01, 2021), *https://www.cdc.gov/vaccines/covid-19/health-departments/breakthrough-cases.html.*

results varies based on, among other factors, type of test used, laboratory capacity, and geographic location.[25] CDC guidance states that individuals who were exposed to a person with COVID–19 may later develop symptoms and should self-quarantine for 14 days, even with receipt of negative test results.[26]

There are also multiple variants of the virus that have resulted in COVID–19 infections in the United States, including the now predominant Delta variant.[27] While vaccination is key in preventing severe disease like hospitalization or death, it may be less effective in preventing infection or transmission of the Delta variant since it is more contagious.[28] Significant Delta variant-related outbreaks have occurred in the United States in recent months, most recently in Massachusetts after multiple large-scale summer events were held from July 3–17, 2021.[29] After these events, 469 individuals contracted the virus, 74 percent of whom were fully vaccinated, and the outbreak was a major catalyst in the CDC's subsequent guidance to resume indoor mask mandates.[30] According to statistical models and genomic surveillance programs, the Delta variant now accounts for approximately 98.9 percent of new cases nationally and current data shows that it is having a disproportionately severe impact on unvaccinated populations.[31]

There are numerous challenges to resuming pre-COVID–19 operations, largely due to the emergence of the Delta variant. CDC has posted guidance for states, businesses, and the general public emphasizing the need for continued mask mandates on public transportation and airplanes, as wearing masks that completely cover the mouth and nose reduces the spread of COVID–19.[32] CDC is also encouraging restaurants and bars to maintain social distancing and mask rules and asking individuals to avoid large events and gatherings.[33] As a result of CDC's renewed mask guidance, the Office of Management and Budget (OMB) issued renewed mask guidelines on July 27, 2021, for employees, contractors, and visitors to Federal buildings which went into effect for DHS on July 28, 2021.[34]

Further, CDC predictive modeling forecasts a continued national increase in new cases, hospitalizations, and deaths over four week intervals. By the week ending October 2, 2021, forecasts expect a weekly increase of approximately 430,000 to 1,520,000 new cases, 6,400 to 19,500 new hospitalizations, and 6,900 to 18,000 new deaths, taking into account variations in social distancing and prevention measures across states. Variations beyond social distancing, including the reopening of schools, may also have an impact on these rates.[35] Studies conducted early in the pandemic indicated low rates of transmission among children and as of September 9, 2021, approximately 62.5 percent of individuals 12 years of age and older were fully vaccinated.[36] Since these early studies, infection rates have increased as opportunities for transmission, including school and summer camp attendance, expanded.[37] It has been reported that at least 1,000 schools across 35 states have closed for in-person learning because of COVID–19 since the beginning of the 2021 school year.[38] In order to minimize the spread, CDC currently recommends screening, physical distancing, taking precautions when participating in team or close contact sports, and consistent mask use, as inconsistent mask policies have contributed to school outbreaks.[39] Finally, as the annual influenza season approaches, questions and concerns over increased transmission of SARS–CoV–2 and decreases in immunity remain. CDC currently recommends a booster shot beginning in the fall of 2021 for certain individuals who received the Pfizer or Moderna vaccines.).[40] CDC's decision to begin booster shots in the fall of 2021 is due to the current information about the vaccine effectiveness and the impact of variants on vaccine effectiveness.[41] A recent study indicated that the infectivity and morbidity rates of COVID–19 are higher in colder climates and the transmissibility of the virus is affected by meteorological factors such as temperature and humidity.[42] This, alongside the increased demand for healthcare resources due to seasonal influenza and the low likelihood that herd immunity will be achieved in 2021, should be taken into account when developing future intervention measures.[43]

II. Purpose of This Temporary Rule

USCIS continues its efforts to protect the health and safety of the employees and the public, including: Requiring facial covers for all employees and members of the public above the age of

[25] CDC, Overview of Testing for SARS–CoV–2 (COVID–19) (Aug. 02, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/hcp/testing-overview.html.*

[26] CDC, Test for Current Infection (Viral Test) (Aug. 02, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/testing/diagnostic-testing.html.*

[27] CDC, SARS–CoV–2 Variant Classifications and Definitions; Cov-Lineages, Global Lineage Report: B.1.617.2.

[28] CDC, Delta Variant: What We Know About the Science.

[29] CDC, Outbreak of SARS–CoV–2 Infections, Including COVID–19 Vaccine Breakthrough Infections, Associated with Large Public Gatherings—Barnstable County, Massachusetts, July 2021 (Aug. 06, 2021), *www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm.*

[30] Id.

[31] CDC, COVID Data Tracker: Variant Proportions (Sept. 07, 2021), *https://covid.cdc.gov/covid-data-tracker/#variant-proportions;* CDC, Delta Variant: What We Know About the Science.

[32] CDC, Requirement for Face Masks on Public Transportation Conveyances and at Transportation Hubs (Aug. 27, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/travelers/face-masks-public-transportation.html.*

[33] CDC, Public Health Guidance for Potential COVID–19 Exposure Associated with Travel (July 02, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html;* CDC, Guidance for Organizing Large Events and Gatherings (May 20, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html;* CDC, Considerations for Restaurant and Bar Operators (June 14, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/business-employers/bars-restaurants.html.*

[34] Department of Homeland Security, Effective Immediately, Updated Mask Guidance for All DHS Workspaces (July 28, 2021).

[35] CDC, COVID–19 Forecasts: Cases (Sept. 08, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/science/forecasting/forecasts-cases.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fforecasts-cases.html;* CDC, COVID–19 Forecasts: Hospitalizations (Sept. 08, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/science/forecasting/hospitalizations-forecasts.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fhospitalizations-forecasts.html;* CDC, COVID–19 Forecasts: Deaths (Sept. 08, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/science/forecasting/forecasting-us.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcovid-data%2Fforecasting-us.html.*

[36] CDC, COVID Data Tracker—COVID–19 Vaccinations in the United States; CDC, Science Brief: Transmission of SARS–CoV–2 in K–12 Schools and Early Care and Education Programs—Updated (July 09, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/transmission_k_12_schools.html.*

[37] Id.

[38] Jeanine Santucci and Grace Hauck, *At least 1,000 schools in 35 states have closed for in-person learning since the start of the school year: COVID–19 updates,* USA TODAY (Sept. 5, 2021), *https://www.usatoday.com/story/news/health/2021/09/05/covid-updates-mu-variant-spreads-hawaii-begs-travelers-stay-away/5735064001/.*

[39] CDC, COVID Data Tracker—COVID—19 Vaccinations in the United States; CDC, Science Brief: Transmission of SARS–CoV–2 in K–12 Schools and Early Care and Education Programs—Updated (July 09, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/transmission_k_12_schools.html.*

[40] CDC, COVID–19 Vaccine Booster Shot (Aug. 20, 2021), *https://www.cdc.gov/coronavirus/2019-ncov/vaccines/booster-shot.html.*

[41] Id.

[42] NIH, The role of seasonality in the spread of COVID–19 pandemic (Feb. 19, 2021), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7892320/.*

[43] Id.

two;[44] limiting the number of employees and members of the public in the office; posting social distance guidelines and asking visitors to answer health screening questions before entering; currently conducting interviews from separate offices to ensure that employees are not in the same room as members of the public; and installing plexiglass where necessary to provide a barrier for employees when social distancing is not possible.

Between March 10, 2021, and August 8, 2021, USCIS conducted 9,136 asylum interviews, for a total of 16,900 interviews since September 23, 2020.[45] The original temporary rule, implemented on September 23, 2020, and its extension implemented on March 22, 2021, and other noted public safety measures have helped mitigate the impact of COVID–19 and have been effective in keeping our workforce and the public safe. As of August 9, 2021, there have been 1,927 confirmed cases of COVID–19 exposure among USCIS employees and contractors. The USCIS exposure rate (6.8%) remains below the national average (10.6%) as of August 7, 2021.

Therefore, DHS has determined that it is in the best interest of the public and USCIS employees and contractors to extend the temporary rule for another 180 days. Under this extension with modification, asylum applicants who are unable to proceed with the interview in English will ordinarily be required to proceed with government-provided telephonic contract interpreters provided the applicants speak one of the 47 languages found on the Required Languages for Interpreter Services Blanket Purchase Agreement/U.S. General Services Administration Language Schedule (''GSA Schedule''). If the applicant does not speak or elects to speak a language not on the GSA Schedule, the applicant will be required to bring his or her own interpreter who is fluent in English to the interview and the elected language not on the GSA schedule. DHS is also amending 8 CFR 208.9(h)(1) by allowing, in USCIS' discretion, an applicant for asylum to provide an interpreter when a USCIS interpreter is unavailable. Specifically, if a USCIS interpreter is unavailable, USCIS will either reschedule the interview and attribute the interview delay to USCIS for the purposes of employment authorization pursuant to 8 CFR 208.7, or USCIS may, in its discretion, allow the applicant to provide an interpreter.

DHS incorporates into this second extension with modification, the justifications, as well as the discussion on the benefits of providing telephonic contract interpreters in reducing the risk of contracting COVID–19 for applicants, attorneys, interpreters, and USCIS employees from the original temporary rule.

III. Discussion of Regulatory Change: 8 CFR 208.9(h)[46]

DHS has determined that there are reasonable grounds for considering potential exposure to SARS–CoV–2, including any emerging variants, as a public health concern and that these grounds are sufficient to continue to modify the interpreter requirement for asylum applicants to lower the number of in-person attendees at asylum interviews. For 180 days following publication of this temporary final rule, DHS will continue to require non-English speaking asylum applicants appearing before USCIS to proceed with the asylum interview using USCIS' interpreter services if they are fluent in one of the 47 languages as discussed in the temporary rule at 85 FR at 59657.[47] DHS is also amending 8 CFR 208.9(h)(1) by allowing, in USCIS' discretion, an applicant for asylum to provide an interpreter when a USCIS interpreter is unavailable. In these limited circumstances, if a USCIS interpreter is unavailable, USCIS will either reschedule the interview and attribute the interview delay to USCIS for the purposes of employment authorization pursuant to 8 CFR 208.7, or USCIS may, in its discretion, allow the applicant to provide an interpreter. The interpreter will be required to follow USCIS COVID–19 protocols in place at the time of the interview, including sitting in a separate office. Once this rule is no longer in effect, asylum applicants unable to proceed with an interview in English before a USCIS asylum officer will be required to provide their own interpreters under 8 CFR 208.9(g).

Allowing an applicant for asylum to provide an interpreter when a USCIS interpreter is unavailable is important and to the benefit of the applicant for several reasons. In some instances, due to a variety of issues including competing demands in other caseloads, contractor availability, and an increased demand for certain languages, USCIS may have knowledge in advance of the interview, that a contract interpreter will not be available for a certain language during the time of the interview. In those instances, USCIS may notify the applicant that an interpreter is unavailable and give the applicant an opportunity to provide their own interpreter for that interview and not cause further delay in the case. This will help reduce unnecessary reschedules and prolonged delays and will help alleviate the burden rescheduling the interview could place on all parties involved, including the applicant, the applicant's representative (if applicable), and the local USCIS office. Providing advance notice of the unavailability of an interpreter and the opportunity for applicants to provide their own interpreter will make the process more efficient, reduce the number of delays, and allow applicants to proceed with their interview. This modification to the government-provided telephonic interpreter requirement will not disadvantage applicants who cannot provide their own interpreter. Such an applicant would be in the same position they would have been without this change to the regulation, and if an applicant is unable to locate a competent interpreter once notified of the unavailability of a contract interpreter, the interview will be rescheduled and the reschedule delay will be attributed to USCIS for purposes of employment authorization.

While USCIS cannot safely accommodate every interview being conducted if all applicants are required to bring an interpreter in person, as explained in this preamble, in these

[44] Facial coverings were part of the initial USCIS COVID mitigation efforts until the CDC and then DHS issued new guidance on May 14, 2021 that fully vaccinated individuals were no longer required to wear masks in DHS space and that temperature checks to enter DHS controlled space were also to be discontinued. On July 28, 2021, DHS issued guidance that all Federal employees, onsite contractors, and visitors, regardless of vaccination status or level of COVID transmission in the local area, are required to wear a mask inside all DHS workspaces and Federal buildings. Further guidance to the public as to the USCIS Response to COVID–19 and Operational Status can be found here: *https://www.uscis.gov/about-us/uscis-response-to-covid-19.*

[45] Between September 23, 2020 and March 10, 2021, USCIS conducted 7,764 asylum interviews. 86 FR at 15074.

[46] The interpreter interview provisions can be found in two parallel sets of regulations: Regulations under the authority of DHS are contained in 8 CFR part 208; and regulations under the authority of the Department of Justice (DOJ) are contained in 8 CFR part 1208. Each set of regulations contains substantially similar provisions regarding asylum interview processes, and each articulates the interpreter requirement for interviews before an asylum officer. *Compare* 8 CFR 208.9(g), *with* 8 CFR 1208.9(g). This temporary final rule revises only the DHS regulations at 8 CFR 208.9. Notwithstanding the language of the parallel DOJ regulations in 8 CFR 1208.9, as of the effective date of this action, the revised language of 8 CFR 208.9(h) is binding on DHS and its adjudications for 180 days. DHS would not be bound by the DOJ regulation at 8 CFR 1208.9(g).

[47] DHS notes that this extension does not modify 8 CFR 208.9(g); rather the extension temporary rule is written so that any asylum interviews occurring while the temporary rule is effective will be bound by the requirements at 8 CFR 208.9(h).

limited circumstances where there is advance knowledge of the unavailability of a contract interpreter and an applicant is able to locate a competent interpreter, USCIS may, within its discretion, accommodate the applicant's interpreter by following the same COVID–19 protocols in place at the time of interview that allow applicants and those necessary to participate in the interview to attend interviews in person safely. USCIS will continue to apply the COVID–19 protocols in place at the time of the interview, including relying on available technology to ensure that the officer, applicant, interpreter, witnesses, and legal representative sit in separate rooms to fully and safely participate in the interview while maintaining social distancing.[48] Interpreters attending appointments with applicants under these limited circumstances will also be expected to follow the USCIS Visitor Policy requiring face coverings, maintaining social distancing during screening and while in USCIS space, and other guidance regarding exposure to COVID–19.[49] This is consistent with current practices for an applicant who either does not speak a language on the GSA Schedule or elects to speak a language that is not on the GSA Schedule, and thus is required to bring his or her own interpreter to the interview who is fluent in English and the elected language (not on the GSA Schedule).

This rule's modification to 8 CFR 208.9(h)(1), giving USCIS discretion to allow asylum applicants to bring their own interpreter when a contract interpreter is unavailable will help advance the agency's mission to fairly adjudicate immigration benefits. By building in flexibility for USCIS when an interpreter fluent in a language included in the GSA Schedule will be unavailable at the time of an asylum interview, USCIS will be better positioned to leverage its resources. In practice this will involve asylum offices evaluating their office space capacity and available asylum staff on a continuous basis to schedule cases in a manner that is consistent with social distancing guidelines and other noted public safety measures. Because USCIS will not schedule more cases than capacity permits under the COVID–19 guidelines, exceptions made to the government-contract interpreter requirement under this temporary final rule should not result in increased exposure or individuals occupying the same physical space at a given time. These practices will also help address the recent emergence of the Delta variant, which as previously discussed, presents numerous challenges to resuming pre-COVID–19 operations, and which can be mitigated through the safety measures currently employed by USCIS.[50] USCIS will continue to employ the same space planning and scheduling mechanisms to factor in the limited cases where USCIS is unable to provide a contract interpreter. USCIS will therefore have more flexibility to adapt to operational demands by proactively addressing the needs of applicants who would otherwise remain uninterviewed.

Given the unique nature of the pandemic and the multiple challenges it has presented in the context of USCIS operations, the agency has had to modify its policies and procedures to adapt. Through the original temporary final rule and the first extension, USCIS adapted its procedures to keep the workforce and public safe while also striving to serve the customer. USCIS has adapted in other ways by developing electronic workflows for conducting interviews and completing the adjudication, and by monitoring language trends and interpreter availability. This second extension with the modification for applicants to bring their own interpreter under certain circumstances, is in keeping with the original goals of the temporary final rule, and gives the agency an opportunity to more effectively meet the needs of individuals seeking protection.

DHS noted in the original temporary final rule and first extension that it would evaluate the public health concerns and resource allocations to determine whether to extend the rule. DHS has determined that extending this rule is necessary for public safety, and accordingly, DHS is extending this rule for 180 days unless it is further extended at a later date. This temporary rule continues to apply to all asylum interviews conducted by USCIS across the nation. USCIS has determined that an extension of 180 days is appropriate given that: (1) The pandemic is ongoing; [51] (2) several variants of the virus are circulating in the United States, with the highly contagious Delta variant as the dominant strain; [52] (3) while vaccines are widely available, data indicates a wide disparity in the percentages of fully vaccinated individuals by state, and fully vaccinated individuals continue to experience breakthrough SARS–CoV–2 infections; [53] and (4) certain variables, including the reopening of schools and cold weather seasonal changes, are likely to cause an increase in COVID–19 infections.[54] Health experts are still learning how easily variants of the virus can be transmitted and how effectively the currently approved and authorized vaccines provide protection. Prior to the expiration of this extension to the temporary rule with modification, DHS will again evaluate the public health concerns and resource allocations to determine if another extension is appropriate to further the goals of promoting public safety. If necessary, DHS would publish any such extension via a rulemaking in the **Federal Register**.

IV. Regulatory Requirements

A. Administrative Procedure Act (APA)

DHS is issuing this extension, including the modification to allow, in USCIS' discretion, an applicant for asylum to provide an interpreter when a USCIS interpreter is unavailable, as a temporary final rule pursuant to the APA's ''good cause'' exception. 5 U.S.C. 553(b)(B). DHS may forgo notice-and-comment rulemaking and a delayed effective date because the APA provides an exception from those requirements when an agency ''for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B); *see* 5 U.S.C. 553(d)(3).

The good cause exception for forgoing notice-and-comment rulemaking ''excuses notice and comment in emergency situations, or where delay could result in serious harm.'' *Jifry* v. *FAA,* 370 F.3d 1174, 1179 (D.C. Cir. 2004). Although the good cause exception is ''narrowly construed and only reluctantly countenanced,'' *Tenn. Gas Pipeline Co.* v. *FERC,* 969 F.2d 1141, 1144 (D.C. Cir 1992), DHS has appropriately invoked the exception in this case, for the reasons set forth in this

[48] *See* USCIS Response to COVID–19: Asylum Appointments, available at *https://www.uscis.gov/about-us/uscis-response-to-covid-19.*

[49] *See* USCIS Visitor Policy, available at *https://www.uscis.gov/about-us/uscis-visitor-policy.*

[50] *See* Delta Variant: What We Know About the Science, available at *https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html* (last visited Aug. 31, 2021).

[51] *See* 86 FR 11599; 85 FR 15337; HHS, Renewal of Determination that a Public Health Emergency exists.

[52] CDC, Delta Variant: What We Know About the Science.

[53] CDC, MMWR; CDC, COVID Data Tracker—COVID–19 Vaccinations in the United States.

[54] CDC, COVID–19 Forecasts: Cases; NIH, The role of seasonality in the spread of COVID–19 pandemic; Johns Hopkins Bloomberg School of Public Health, *Will There be a Fall 2021 Resurgence of COVID–19 in the U.S.?* (June 17, 2021), *https://publichealth.jhu.edu/2021/will-there-be-a-fall-2021-resurgence-of-covid-19-in-the-us.*

temporary final rule. Additionally, on multiple occasions, agencies have relied on this exception to promulgate both communicable disease-related [55] and immigration-related [56] interim rules, as well as extend such rules.[57]

DHS is publishing this second extension, with modification, as a temporary final rule because of the continuing COVID–19 crisis and incorporates into this extension with modification the discussion of good cause from the original and extension temporary rules. As discussed earlier in this preamble, on February 24, 2021, President Biden issued a notice on the continuation of the state of the National Emergency concerning the COVID–19 pandemic.[58] Effective July 20, 2021, the Secretary of Health and Human Services renewed the determination that ''a public health emergency exists and has existed since January 27, 2020 nationwide.'' [59]

As of September 9, 2021, there have been approximately 222,406,582 cases of COVID–19 identified globally, resulting in approximately 4,592,934 deaths; approximately 40,152,521 cases have been identified in the United States, with about 1,297,399 new cases being identified in the 7 days preceding September 5th, and approximately 646,131 reported deaths due to the disease.[60] In the week preceding September 5th, the United States was the country that reported the highest number of new cases, with a 38 percent increase.[61]

Additionally, at least four notable variants of the virus that causes COVID–19 have been reported in the United States, including the now predominant Delta variant.[62] Evidence suggests that these variants may spread faster and more easily than others and at least one variant may be associated with an increased risk of death.[63] Although vaccines are now widely accessible, there is wide disparity in the percentages of vaccinated individuals by state,[64] and experts still do not know the percentage needed to reach herd immunity, as well as how effective the vaccines are against new variants, and how long vaccines protect people.[65]

Ongoing research demonstrates that while there is high vaccine effectiveness, fully vaccinated individuals continue to experience breakthrough COVID–19 infections and may be either symptomatic or asymptomatic.[66] As of April 30, 2021, 10,262 SARS–CoV–2 breakthrough infections were reported from 46 U.S. states and territories.[67] This data is limited, however, because most breakthrough infections are voluntarily reported, and on May 1, 2021, CDC began tracking breakthrough infections only where a patient is hospitalized or dies.[68] As of August 30, 2021, CDC received reports from 49 U.S. states and territories of 12,908 patients with SARS–CoV–2 breakthrough infections who were hospitalized or died.[69]

The provision allowing an applicant for asylum, in USCIS' discretion, to provide an interpreter when a USCIS interpreter is unavailable, is a measure that allows USCIS and the applicant for asylum to proceed with the interview under the same COVID–19 mitigation procedures that are employed when accommodating other participants in the asylum interview. As previously discussed in Section III of the preamble, the COVID–19 pandemic is a rapidly changing situation, and it is difficult to anticipate how the disruptions caused by the crisis will manifest themselves. Given the unique nature of the pandemic and the multiple challenges it has presented in the context of USCIS operations, the agency has had to modify its policies and procedures to adapt to the COVID–19 public health emergency. USCIS expects the provision to allow USCIS to address this rapidly changing situation caused by the COVID–19 pandemic with more flexibility to best respond to the continuing stream of new asylum applications and the need to adjudicate them promptly. As stated previously, competing demands in other caseloads, contractor availability, and an increased demand for certain languages, have impacted USCIS' ability to consistently provide contract interpreters to applicants at the time of the interview. Throughout the COVID–19 pandemic, USCIS has continued to experience an increase in the affirmative caseload, which, in turn, has created challenges in accommodating the interpretation needs of asylum applicants. Surges in other case types have also required USCIS to divert contract interpreter resources away from affirmative asylum. These increases necessitate an immediate change to address a growing and more diverse population of applicants requesting asylum and needing interpreters.

As discussed in Section III of the preamble, an applicant who either does not speak or elects to speak a language not on the GSA Schedule is required to bring his or her own interpreter to the interview who is fluent in English and the elected language not on the GSA Schedule. Allowing an asylum applicant, in USCIS' discretion, to provide an interpreter when a USCIS interpreter is unavailable, is the equivalent to and is consistent with the practice of allowing an applicant to do the same when a USCIS interpreter is available. It is also unnecessary to seek comment on the change this temporary rule makes to now allow, in USCIS' discretion, an asylum applicant to provide an interpreter when a USCIS interpreter is unavailable, because the obligation of the applicant will not have

[55] HHS Control of Communicable Diseases; Foreign Quarantine, 85 FR 7874 (Feb. 12, 2020) (interim final rule to enable the CDC ''to require airlines to collect, and provide to CDC, certain data regarding passengers and crew arriving from foreign countries for the purposes of health education, treatment, prophylaxis, or other appropriate public health interventions, including travel restrictions''); Control of Communicable Diseases; Restrictions on African Rodents, Prairie Dogs, and Certain Other Animals, 68 FR 62353 (Nov. 4, 2003) (interim final rule to modify restrictions to ''prevent the spread of monkeypox, a communicable disease, in the United States.'').

[56] *See, e.g.,* Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended, 81 FR 5906, 5907 (Feb. 04, 2016) (interim rule citing good cause to immediately require a passport and visa from certain H2–A Caribbean agricultural workers to avoid ''an increase in applications for admission in bad faith by persons who would otherwise have been denied visas and are seeking to avoid the visa requirement and consular screening process during the period between the publication of a proposed and a final rule''); Suspending the 30-Day and Annual Interview Requirements From the Special Registration Process for Certain Nonimmigrants, 68 FR 67578, 67581 (Dec. 02, 2003) (interim rule claiming the good cause exception for suspending certain automatic registration requirements for nonimmigrants because ''without [the] regulation approximately 82,532 aliens would be subject to 30-day or annual re-registration interviews'' over a six-month period).

[57] *See, e.g.,* Temporary Changes to Requirements Affecting H–2A Nonimmigrants Due to the COVID–19 National Emergency: Partial Extension of Certain Flexibilities, 85 FR 51304 (Aug. 20, 2020) (temporary final rule extending April 20, 2020 temporary final rule); CDC, Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID–19, 86 FR 34010 (July 01, 2021) (extension order).

[58] 86 FR 11599.

[59] HHS, Renewal of Determination that a Public Health Emergency Exists (July 19, 2021), *https://www.phe.gov/emergency/news/healthactions/phe/Pages/COVID-19July2021.aspx;* HHS, Renewal of Determination that a Public Health Emergency Exists (July 19, 2021); Notice on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID–19) Pandemic; Proclamation 9994 of March 13, 2020, Declaring a National Emergency Concerning the Coronavirus Disease (COVID–19) Outbreak.

[60] WHO, WHO Coronavirus (COVID–19) Dashboard; WHO, Weekly Epidemiological Update.

[61] WHO, WHO Coronavirus (COVID–19) Dashboard.

[62] CDC, Variants of the Virus.

[63] CDC, Variants of the Virus.

[64] CDC, COVID Date Tracker.

[65] CDC, Key Things to Know About COVID–19 Vaccines.

[66] CDC, MMWR.

[67] Id.

[68] Id.

[69] CDC, COVID–19 Vaccine Breakthrough Case Investigation and Reporting.

changed, the applicant will benefit from being allowed to bring their own interpreter, and the applicant would be in the same position they would have been without this action.

For the reasons stated, including the need to be responsive to the operational demands and challenges caused by the ongoing COVID–19 pandemic, DHS believes it has good cause to determine that ordinary notice and comment procedure is impracticable for this temporary action, including the modification, and that moving expeditiously to make this change is in the best interest of the public.

Based on the continuing health emergency, DHS has renewed mask guidelines and other mitigation measures, and concluded that the good cause exceptions in 5 U.S.C. 553(b)(B) and (d)(3) apply to this temporary final rule extension with modification. Delaying implementation of this rule until the conclusion of notice-and-comment procedures and the 30-day delayed effective date would be impracticable and contrary to the public interest due to the need to continue agency operations, while continuing to mitigate the risks associated with the spread of COVID–19. Additionally, certain variables, including the reopening of schools, cold weather seasonal changes, and the annual influenza, are likely to cause an increase in infections.

As of August 8, 2021, USCIS had 406,801 asylum applications, on behalf of 638,893 noncitizens, pending final adjudication. Over 94 percent of these pending applications are awaiting an interview by an asylum officer. The USCIS backlog will continue to increase at a faster pace if USCIS is unable to safely and efficiently conduct asylum interviews.[70]

This temporary final rule extension with modification is promulgated as a response to COVID–19 and emerging variants. It is temporary, limited in application to only those asylum applicants who cannot proceed with the interview in English, and narrowly tailored to mitigate the spread of COVID–19. To not extend such a measure could cause serious and far-reaching public safety and health effects.

[70] DHS recognizes that the backlog has increased since the original temporary final rule was extended; however, if all applicants were required to bring their own interpreter as was done pre-COVID–19, the interpreter would generally have to sit in a separate office during the interview to mitigate potential COVID–19 exposure, thereby reducing available office space to schedule additional interviews in a safe manner. This would likely increase the backlog at a faster rate than under this rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required when a rule is exempt from notice-and-comment rulemaking.

C. Unfunded Mandates Reform Act of 1995

This temporary final rule extension with modification will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Congressional Review Act

OMB's Office of Information and Regulatory Affairs has determined that this action is not a major rule as defined by Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act). 5 U.S.C. 804(2). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

E. Executive Order 12866 Executive Order 13563

Executive Orders (E.O.) 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule is designated a significant regulatory action under E.O. 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this regulation. DHS, however, is proceeding under the emergency provision of Executive Order 12866 Section 6(a)(3)(D) based on the need to move expeditiously during the current public health emergency.

This action will continue to help asylum applicants proceed with their interviews in a safe manner, while protecting agency staff. As a result of the first temporary rule extension, between March 10, 2021, and August 8, 2021, USCIS conducted 9,136 asylum interviews, with interpreters available telephonically. This second extension of the temporary rule with modification is not expected to result in any additional costs to the government. In addition, even with the provision that would permit, at USCIS' discretion, an applicant for asylum to provide an interpreter when a contract interpreter is unavailable, there are no additional costs to the applicant relative to what would be the requirements if the earlier temporary final rule (TFR) were not extended. As discussed previously in Section III of the preamble, in those limited circumstances where a USCIS interpreter is unavailable and USCIS permits the applicant to provide their own interpreter, the interpreter will be required to follow USCIS COVID–19 protocols in place at the time of the interview, including, but not limited to, sitting in a separate office. Following those COVID–19 protocols will not result in any additional costs for either the applicant or the interpreter.

As previously explained, the contract interpreters will be provided at no cost to the applicant. USCIS already has an existing contract to provide telephonic interpretation and monitoring in interviews for all of its case types. USCIS has provided monitors for many years. Almost all interviews that utilize a USCIS provided interpreter after this rulemaking would have had a contracted monitor under the status quo. As the cost of monitoring and interpretation are identical under the contract and monitors will no longer be needed for these contract interpreter interviews, the extension of this portion of this rule is projected to be cost neutral or negligible as USCIS is already paying for these services even without this rule.

USCIS anticipates that there would only be limited circumstances where a contract interpreter would be unavailable. As previously discussed in Section III of the preamble, in those limited circumstances where a contract interpreter is unavailable, USCIS will either reschedule the interview and attribute the interview delay to USCIS for the purposes of employment authorization pursuant to 8 CFR 208.7, or USCIS may, in its discretion, allow

the applicant to provide an interpreter. In such cases, the applicant would be in the same position they would have been without this action.

DHS recognizes there are both quantitative and qualitative benefits that could be realized by providing an applicant for asylum the opportunity to bring their own interpreter when a contract interpreter is unavailable, such as the costs avoided that would be incurred through rescheduling if a contract interpreter is unavailable—both for the applicant and USCIS, and the overall positive effect on applicants of having their asylum application timely adjudicated. Once this rule is no longer in effect, asylum applicants unable to proceed with an interview before a USCIS asylum officer in English will again be required to provide their own interpreters under 8 CFR 208.9(g).

F. Executive Order 13132 (Federalism)

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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act

This rule does not propose new, or revisions to existing, ''collection[s] of information'' as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320. As this action would only span 180 days, USCIS does not anticipate a need to update the Form I–589, Application for Asylum and for Withholding of Removal, despite the existing language on the form instructions regarding interpreters, because it will be primarily rescheduling interviews that were cancelled due to COVID–19. USCIS will post updates on its I–589 website, *https://www.uscis.gov/i-589,* and other asylum and relevant web pages regarding the new interview requirements in this regulation, as well as provide personal notice to applicants via the interview notices issued to applicants prior to their interview.

List of Subjects in 8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, the Secretary of Homeland Security amends 8 CFR part 208 as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Pub. L. 110–229; 8 CFR part 2; Pub. L. 115–218.

■ 2. Effective from September 20, 2021, through March 16, 2022, amend § 208.9 by revising paragraphs (h) introductory text and (h)(1)(i) to read as follows:

§ 208.9 Procedure for interview before an asylum officer.

* * * * *

(h) *Asylum applicant interpreters.* For asylum interviews conducted between September 21, 2021, through March 16, 2022:

(1) * * *

(i) If a USCIS interpreter is unavailable, USCIS will either reschedule the interview and attribute the interview delay to USCIS for the purposes of employment authorization pursuant to § 208.7, or USCIS may, in its discretion, allow the applicant to provide an interpreter.

* * * * *

Alejandro Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2021–20161 Filed 9–16–21; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0263; Project Identifier AD–2020–01702–T; Amendment 39–21710; AD 2021–18–09]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 777 airplanes. This AD was prompted by a report that an operator found solid rivets with missing heads at the left buttock line 25 on the sloping pressure deck web. This AD requires doing a detailed inspection of the left- and right-side sloping pressure deck at certain stations for any damaged solid rivets, and applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 22, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 22, 2021.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0263.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0263; 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: Luis Cortez, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: (206) 231–3958; email: *Luis.A.Cortez-Muniz@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 777 airplanes. The NPRM published in the **Federal Register** on April 9, 2021 (86 FR 18479). The NPRM was

prompted by a report that an operator found solid rivets with missing heads at the left buttock line 25 on the sloping pressure deck web. In the NPRM, the FAA proposed to require doing a detailed inspection of the left- and right-side sloping pressure deck at certain stations for any damaged solid rivets, and applicable on-condition actions. The FAA is issuing this AD to address damaged or missing solid rivet heads on the sloping pressure deck web, which could result in loss of sloping pressure deck panels, causing decompression and pressure loss, and loss of the hydraulic systems in the area for wheel brakes (both normal and alternate) and steering, and potentially leading to runway departure and adversely affecting the structural integrity of the airplane.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from four commenters, including Boeing, American Airlines (AA), FedEx, and United Airlines (UAL). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Revise the On-Condition Actions Statement

Boeing requested a revision to the on-condition actions statement in the third sentence of the ''Related Service Information Under 1 CFR part 51'' paragraph of the NPRM. Boeing stated that the repetitive detailed inspections cover ''two rows of fasteners common to the affected stiffener,'' instead of ''two rows of blind fasteners and solid rivets common to the affected stiffener.'' Boeing commented that the blind fastener repair option is allowed only under Condition 2 of Boeing Alert Requirements Bulletin 777–53A0093 RB, dated November 24, 2020, which is limited to findings of a maximum of nine damaged rivets within the same stiffener. Boeing commented that the damage rivets must be within the same fastener row, and therefore, the compliance action does not allow for blind fasteners to be installed in both fastener rows of an affected stiffener. Boeing commented that the revised language improves clarity of the on-condition actions because it does not imply that blind fasteners can be installed in both fastener rows of an affected stiffener.

The FAA agrees to revise the on-condition actions statement in the ''Related Service Information Under 1 CFR part 51'' paragraph of this final rule for the reasons provided above; the FAA has revised this final rule accordingly.

Request To Revise Cost of Compliance Paragraph

Boeing requested a revision to the on-condition work-hours for replacing a blind fastener. Boeing stated that the blind fastener replacement does not require internal access, and therefore, the 328 work-hours can be reduced to 11 work-hours as noted in Boeing Information Notice 777–53A0093 IN 01, dated January 27, 2021.

The FAA agrees to revise the on-condition work-hours for replacing a blind fastener for the reason provided above; this final rule has been revised accordingly.

Request To Clarify the Applicability

AA asked if the rivet problems specified in the NPRM affect any airplanes in the AA livery, particularly N-numbers (nose numbers) so it can keep better track on preflights.

For clarification, this AD does affect AA airplanes because its fleet includes Model 777–200 and –300ER airplanes. This AD applies to all Model 777–200, –200LR, –300, –300ER, and 777F airplanes, as specified in paragraph (c) of this AD. Since all Model 777 airplanes are affected, it is not necessary to identify airplanes by N-numbers. The FAA has not changed this AD in this regard.

Request To Revise the Compliance Time

FedEx Express (FedEx) agreed with the intent of the proposed AD, but found the 16-month compliance time for the initial inspection does not align with its heavy maintenance visits and requested an extension. FedEx stated that its current heavy maintenance visits would be the suitable time to accomplish the actions in the proposed AD, and that accomplishing the initial inspection in the proposed AD may require performing special maintenance visits. FedEx commented that it currently has 26 Model 777F airplanes that have accumulated more than 32,000 flight hours, and therefore, will be required to accomplish the initial inspection within the 16-month initial compliance time.

FedEx also commented that since Boeing found the missing rivet heads from a retired Model 777–200 airplane, the current in-service Model 777 airplanes can operate with missing rivets without experiencing adverse structural complications since the issue was not discovered until after that airplane retired from service.

The FAA disagrees with the commenter's request to extend the initial compliance time. The FAA cannot assume that Model 777 airplanes can operate with missing rivet heads without experiencing adverse structural complications. The FAA determined that the compliance time, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to safely operate before the initial and repetitive inspections and on-condition actions are done. If the inspection interval were based on maintenance schedules, which vary among operators, there would be no assurance that the airplane would be inspected and repaired during that maximum interval. In addition, in developing an appropriate compliance time, the FAA coordinated with the manufacturer to provide a compliance time with an acceptable level of safety. However, under the provisions of paragraph (i) of this AD, the FAA will consider requests for approval of an extension of the compliance time, if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety. The FAA has not changed this AD in this regard.

Request To Clarify Required Service Information

FedEx requested that the FAA revise note 1 to paragraph (g) in the proposed AD to clarify that the proposed AD requires accomplishment of the actions only specified in Boeing Alert Requirements Bulletin 777–53A0093 RB, dated November 24, 2020. FedEx stated that note 1 does not clearly distinguish the required actions from the guidance service information for accomplishing the actions in the proposed AD.

The FAA disagrees with the commenter's request to change the note. For clarification, paragraph (g) of this AD states the required actions for applicable airplanes, and only specifies to do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 777–53A0093 RB, dated November 24, 2020. The FAA clearly states that note 1 to paragraph (g) of this AD is guidance and Boeing Alert Service Bulletin 777–53A0093, dated November 24, 2020, is only referred to in that note. The FAA has not changed this AD in this regard.

Request To Clarify Repair Instructions

UAL indicated support for the NPRM, but requested clarification as to what to do if a Condition 4 is found in one stiffener and a Condition 3 is found in

another stiffener as referenced in Boeing Alert Service Bulletin 777–53A0093, dated November 24, 2020. UAL stated that Condition 4 requires operators to contact Boeing and request repair instructions and to do the repair if any damaged rivet is found on both fastener rows within the same stiffener.

In addition, UAL requested the following clarifications.

- When contacting Boeing, should operators provide all details of affected stiffeners regardless of the condition identified in Boeing Alert Service Bulletin 777–53A0093, dated November 24, 2020? UAL commented that Boeing Alert Service Bulletin 777–53A0093, dated November 24, 2020, appears to request details associated with a specific stiffener only.
- Where a Condition 4 discrepancy is present, is it acceptable to continue with the repair of an adjacent Condition 3 stiffener discrepancy or is further manufacturer approval required?

UAL stated that it assumes that the conservative approach would be for the operator to provide all details of affected stiffeners to the manufacturer and then the manufacturer will provide approval to repair both Conditions 3 and 4, as referenced in Boeing Alert Service Bulletin 777–53A0093, dated November 24, 2020. UAL asserted that clarification will help operators determine which information is required by the manufacturer to make a repair assessment, and it will also provide clarification as to what to do in the event of a parallel process involving both Condition 3 and Condition 4 repair.

The FAA provides the following clarification for the commenter. This AD requires operators to use Boeing Alert Requirements Bulletin 777–53A0093 RB, dated November 24, 2020, to perform the actions required in this AD. Boeing Alert Service Bulletin 777–53A0093, dated November 24, 2020, is for guidance only. Boeing Alert Requirements Bulletin 777–53A0093 RB, dated November 24, 2020, does not specify any limitations on a Condition 3 repair based on any conditions found on another stiffener. When a Condition 3 is found, the FAA finds no issues with continuing with the Condition 3 repair of replacing all solid rivets even in the event a Condition 4 is found in an adjacent stiffener. Regarding the question on the details to provide to Boeing for a repair, as specified in Note 4. of 5.A., ''General Information,'' of Boeing Alert Requirements Bulletin 777–53A0093 RB, dated November 24, 2020, operators can refer to Boeing Service Letter 777–SL–51–013, Damage Reporting and Repair Plan/Design Guidelines, which describes what information must be provided to Boeing before a structural repair can be provided. The structural repair must be approved by the FAA or the Boeing Company Organization Designation Authorization (ODA) as specified in paragraph (h)(2) of this AD. The FAA has not revised this AD in this regard.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 777–53A0093 RB, dated November 24, 2020. This service information specifies procedures for doing a detailed inspection of the left- and right-side sloping pressure deck from station (STA) 1245 to STA 1287 for any damaged (*i.e.,* missing solid rivet heads, cracking or deformation of the solid rivet, or gaps between the solid rivet head and the sloping pressure deck surface) solid rivets, and applicable on-condition actions. On-condition actions include repeating the detailed inspection of the left-and right-side sloping pressure deck from STA 1245 to STA 1287 for any damaged solid rivet; repetitive detailed inspections of two rows of fasteners common to the affected stiffener for any damaged solid rivet or damaged blind fastener; replacing solid rivets or blind fasteners; and repair. 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**.

Costs of Compliance

The FAA estimates that this AD affects 224 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
Detailed inspections	Up to 384 work-hours × $85 per hour = Up to $32,640.	$0	Up to $32,640	Up to $7,311,360.

The FAA estimates the following costs to do any necessary replacements or inspections 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 or inspections:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement (solid fastener)	338 work-hours × $85 per hour = $28,730.	Up to $3,200	Up to $31,930.
Replacement (blind fastener)	11 work-hour × $85 per hour = $935.	Up to $450	Up to $1,385.
Repetitive inspections of fastener rows.	326 work-hours × $85 per hour = $27,710 per inspection cycle.	$0 per inspection cycle	$27,710 per inspection cycle.

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–18–09 The Boeing Company: Amendment 39–21710; Docket No. FAA–2021–0263; Project Identifier AD–2020–01702–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 22, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that an operator found solid rivets with missing heads at the left buttock line 25 on the sloping pressure deck web. The FAA is issuing this AD to address damaged or missing solid rivet heads on the sloping pressure deck web, which could result in loss of sloping pressure deck panels, causing decompression and pressure loss, and loss of the hydraulic systems in the area for wheel brakes (both normal and alternate) and steering, and potentially leading to runway departure and adversely affecting the structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 777–53A0093 RB, dated November 24, 2020, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 777–53A0093 RB, dated November 24, 2020.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 777–53A0093, dated November 24, 2020, which is referred to in Boeing Alert Requirements Bulletin 777–53A0093 RB, dated November 24, 2020.

(h) Exceptions to Service Information Specifications

(1) Where Boeing Alert Requirements Bulletin 777–53A0093 RB, dated November 24, 2020, uses the phrase ''the original issue date of 777–53A0093 RB'' or ''the original issue date of Requirements Bulletin 777–53A0093 RB,'' this AD requires using ''the effective date of this AD,'' except where Alert Requirements Bulletin 777–53A0093 RB, dated November 24, 2020, uses the phrase ''the original issue date of Requirements Bulletin 777–53A0093 RB'' in a note or flag note.

(2) Where Boeing Alert Requirements Bulletin 777–53A0093 RB, dated November 24, 2020, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

(1) For more information about this AD, contact Luis Cortez, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: (206) 231–3958; email: *Luis.A.Cortez-Muniz@faa.gov*.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (4) of this AD.

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 777–53A0093 RB, dated November 24, 2020.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com*.

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th

St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(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 25, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–20035 Filed 9–16–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0919; Project Identifier 2019–NE–24–AD; Amendment 39–21714; AD 2021–18–13]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all General Electric Company (GE) CF34–8 model turbofan engines with a certain outer shell combustion liner (combustion outer liner shell) installed. This AD was prompted by two in-flight engine shutdowns (IFSDs) that occurred as a result of failures of the combustion outer liner shell. This AD requires a borescope inspection (BSI) or visual inspection of the combustion outer liner shell and, depending on the results of the inspection, possible replacement of the combustion outer liner shell. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 22, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 22, 2021.

ADDRESSES: For service information identified in this final rule, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ge.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7759. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0919.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0919; 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: Scott Stevenson, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7132; fax: (781) 238–7199; email: *Scott.M.Stevenson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all CF34–8C1, CF34–8C5, CF34–8C5A1, CF34–8C5B1, CF34–8C5A2, CF34–8C5A3, CF34–8E2, CF34–8E2A1, CF34–8E5, CF34–8E5A1, CF34–8E5A2, CF34–8E6, and CF34–8E6A1 model turbofan engines with a certain combustion outer liner shell installed. The NPRM published in the **Federal Register** on January 10, 2020 (85 FR 1292). The NPRM was prompted by reports of two IFSDs on GE CF34–8C and –8E model turbofan engines. These IFSDs were due to the cracking and collapsing of the combustion outer liner shell, which resulted in thermal distress of the high-pressure turbine and low-pressure turbine (LPT) including burn-through of the LPT case. In the NPRM, the FAA proposed to require a BSI or visual inspection of the combustion outer liner shell and, depending on the results of the inspection, possible replacement of the combustion outer liner shell. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from four commenters. The commenters were Horizon Air, Japan Airlines, Endeavor Air, and the Air Line Pilots Association, International (ALPA). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Change the Initial Compliance Time

Horizon Air requested the FAA revise the initial inspection threshold in proposed paragraph (g)(2) of the NPRM to ''17,499 flight hours (FHs) time since new (TSN) or time since repair (TSR), or 12,000 flight cycles (FCs) TSN or TSR, whichever occurs later.'' Horizon Air reasoned that the initial inspection threshold in paragraph (g)(2) of the proposed AD would unfairly penalize operators, like Horizon Air, with high FH to FC ratios. Horizon Air further stated that using the higher FH to FC ratios, the proposed 17,499 FHs TSN or TSR inspection threshold would equate to approximately 11,000 engine FCs. This FC value is substantially below the GE targeted initial engine shop visit threshold of 12,000 to 14,000 FCs and would potentially result in a significant increase in the number of engine shop visits over the 6- to 12-year operating lifespan of each engine.

The FAA partially agrees. While the failure mode is partially related to FCs, the compliance is published in FHs to align with existing maintenance intervals. Incorporating both measures as intervals into this AD is impractical; however, operators may request an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k) of this AD to use alternate intervals. The FAA did not change this AD as a result of this comment.

Request To Change the Installation Prohibition

Horizon Air requested the FAA revise paragraph (h), Installation Prohibition, as proposed in the NPRM, so it does not conflict with the proposed required actions specified in paragraph (g)(1) of the NPRM. Horizon Air stated that paragraph (h) of the proposed AD prohibits installation of a combustion outer liner shell with greater than 17,500 FHs TSN or TSR, without first inspecting it in accordance with paragraph (g)(1) of the proposed AD. However, paragraph (g)(1) of the proposed AD requires inspection of the combustion outer liner shell within 500 engine FHs TSN or TSR for those combustion outer liner shells that have accumulated 17,500 FHs TSN or TSR. Horizon Air concluded that the 18,000 FHs TSN or TSR limitation specified in paragraph (g)(1) of the proposed AD conflicts with the 17,500 FHs TSN or

TSR limit specified in paragraph (h) of the proposed AD.

The FAA disagrees. The initial inspection threshold is 17,500 FHs for affected engines. This AD provides a grace period of 500 FHs for in-service engines to prevent the unintentional grounding of airplanes with affected engines. The FAA did not change this AD as a result of this comment.

Request To Include a Terminating Action

Horizon Air requested the FAA petition GE for a terminating action to the inspection requirements in the proposed AD. Horizon Air commented the financial cost and maintenance burden of performing the repetitive inspections are significant.

The FAA disagrees. The FAA considers this AD to be interim action and will consider further rulemaking if the manufacturer develops a terminating action. The FAA included all estimated costs in the Costs of Compliance section in the preamble of this AD. The FAA did not change this AD as a result of this comment.

Request To Revise Service Information References

Horizon Air, Japan Airlines, and Endeavor Air requested the FAA update references to GE CF34–8E Alert Service Bulletin (SB) 72–A0221 and GE CF34–8C Alert SB 72–A0335 in the Required Actions section, paragraph (g), of the proposed AD. Japan Airlines requested that GE CF34–8E–AL S/B 72–A0221, Original Issue, dated June 27, 2019, be added to the compliance paragraphs because the Original Issue and R01 have the same inspection methods and limits. Horizon Air requested that the FAA reference only GE CF34–8E Alert SB 72–A0221 R01 in paragraph (g) of the proposed AD and add a Previous Credit section to allow previous compliance using the Original Issue. Endeavor Air requested that the FAA reference the latest revision of GE CF34–8C Alert SB 72–A0335 in proposed paragraph (g). Endeavor Air indicated that GE planned to issue R02 of CF34–8C Alert SB 72–A0335 on February 24, 2020.

The FAA agrees to reference the latest revision of these Alert SBs, which is R02 for both GE CF34–8C Alert SB 72–A0335 and GE CF34–8E Alert SB 72–A0221, in paragraph (g) of this AD. The FAA disagrees with the need to reference prior revisions of these Alert SBs in paragraphs (g) of this AD but agrees to add Credit for Previous Actions, paragraph (j), to this AD to allow credit for performing inspections prior to the effective date of this AD. These changes impose no additional burden on operators who are required to comply with this AD.

Request To Clarify Compliance

Japan Airlines requested that the FAA clarify whether the inspection should occur ''before'' or ''within'' 500 FHs after the effective date of this AD. Japan Airlines reasoned that the service bulletin specifies to inspect ''before'' 500 FHs, while the NPRM proposed to inspect ''within'' 500 FHs.

The FAA agrees. The FAA revised Required Actions, paragraphs (g)(1) and (2) of this AD to specify, ''before accumulating 500 engine FHs.''

Support for the AD

ALPA expressed support for the NPRM as written.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed General Electric CF34–8C Alert SB 72–A0335 R02 and General Electric CF34–8E Alert SB 72–A0221 R02, both dated February 25, 2020. The Alert SBs specify procedures for performing a BSI of the combustion outer liner shell. These documents are distinct since they apply to different engine models. 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**.

Interim Action

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

Costs of Compliance

The FAA estimates that this AD affects 1,535 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
BSI or visually inspect the combustion outer liner shell.	3 work-hours × $85 per hour = $255	$0	$255	$391,425

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 engines that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace the combustion outer liner shell	812 work-hours × $85 per hour = $69,020	$80,000	$149,020

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–18–13 General Electric Company: Amendment 39–21714; Docket No. FAA–2019–0919; Project Identifier 2019–NE–24–AD.

(a) Effective Date

This airworthiness directive (AD) is effective October 22, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company (GE) CF34–8C1, CF34–8C5, CF34–8C5A1, CF34–8C5B1, CF34–8C5A2, CF34–8C5A3, CF34–8E2, CF34–8E2A1, CF34–8E5, CF34–8E5A1, CF34–8E5A2, CF34–8E6, and CF34–8E6A1 model turbofan engines with an outer shell combustion liner (combustion outer liner shell), part number (P/N) 4124T04G04, P/N 4124T04G05, or P/N 5159T35G02, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7240, Turbine Engine Combustion Section.

(e) Unsafe Condition

This AD was prompted by two in-flight engine shutdowns (IFSDs) that occurred as a result of failures of the combustion outer liner shell. The FAA is issuing this AD to prevent failure of the combustion outer liner shell. The unsafe condition, if not addressed, could result in burn-through of the low-pressure turbine case, engine fire, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) For an affected engine with a combustion outer liner shell that on the effective date of this AD has accumulated 17,500 flight hours (FHs) or greater time since new (TSN), or time since repair (TSR), perform an initial borescope inspection (BSI) or visual inspection of the combustion outer liner shell for cracks before accumulating 500 engine FHs after the effective date of this AD.

(i) For GE CF34–8C engines, inspect using the Accomplishment Instructions, paragraphs 3.A.(4) and 3.A.(5), of GE CF34–8C Alert Service Bulletin (SB) 72–A0335 R02, dated February 25, 2020 (CF34–8C Alert SB 72–A0335).

(ii) For GE CF34–8E engines, inspect using the Accomplishment Instructions, paragraphs 3.A.(4) and 3.A.(5), of GE CF34–8E Alert SB 72–A0221 R02, dated February 25, 2020 (CF34–8E Alert SB 72–A0221).

Note 1 to paragraph (g)(1): GE has identified the service information as an ''Alert Service Bulletin,'' which is stated only in the body of the Alert SB.

(2) For an affected engine with a combustion outer liner shell that on the effective date of this AD has accumulated 17,499 FHs or fewer TSN or TSR, before accumulating 500 engine FHs after the combustion outer liner shell has accumulated 17,500 FHs TSN or TSR, perform an initial BSI or visual inspection on the combustion outer liner shell for cracks.

(i) For GE CF34–8C engines, inspect using the Accomplishment Instructions, paragraphs 3.A.(4) and 3.A.(5), of CF34–8C Alert SB 72–A0335.

(ii) For GE CF34–8E engines, inspect using the Accomplishment Instructions paragraphs 3.A.(4) and 3.A.(5), of CF34–8E Alert SB 72–A0221.

(3) For an affected engine with a combustion outer liner shell for which it is not possible to determine the TSN or TSR, use the engine FHs since new to determine when to perform the initial BSI or visual inspection.

(4) After the effective date of this AD, and after the initial inspection required by paragraph (g)(1) or (2) of this AD, re-inspect or remove the combustion outer liner shell using inspection criteria as follows:

(i) For GE CF34–8C engines, use Table 1 of CF34–8C Alert SB 72–A0335.

(ii) For GE CF34–8E engines, use Table 1 of CF34–8E Alert SB 72–A0221.

(h) Installation Prohibition

After the effective date of this AD, do not install a combustion outer liner shell with greater than 17,500 FHs TSN or TSR without first inspecting the combustion outer liner shell in accordance with paragraph (g)(1) of this AD.

(i) Definition

For the purpose of this AD, ''time since repair (TSR)'' is the amount of FHs accumulated on the combustion outer liner shell since performing GEK 105091 or GEK 112031, 72–44–06, REPAIR 023.

(j) Credit for Previous Actions

You may take credit for any initial BSI or visual inspection of the combustion outer liner shell required by paragraphs (g)(1) and (2) of this AD if you performed the initial BSI or visual inspection before the effective date of this AD using:

(1) GE CF34–8C–AL S/B 72–A0335, Original Issue, dated June 27, 2019;

(2) GE CF34–8C Alert SB 72–A0335 R01, dated September 23, 2019;

(3) GE CF34–8E–AL S/B 72–A0221, Original Issue, dated June 27, 2019; or

(4) GE CF34–8E Alert SB 72–A0221 R01, dated September 23, 2019.

(k) 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.

(l) Related Information

For more information about this AD, contact Scott Stevenson, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7132; fax: (781) 238–7199; email: *Scott.M.Stevenson@faa.gov.*

(m) 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) GE CF34–8C Alert Service Bulletin (SB) 72–A0335 R02, dated February 25, 2020.

(ii) GE CF34–8E Alert SB 72–A0221 R02, dated February 25, 2020.

(3) For GE service information identified in this AD, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ge.com.*

(4) You may view this service information at 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 26, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–20042 Filed 9–16–21; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 640 and 698

RIN 3084–AB63

Duties of Creditors Regarding Risk-Based Pricing 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 Duties of Creditors Regarding Risk-Based Pricing Rule (''Risk-Based Pricing Rule'') and its related model notice to correspond to changes made to the Fair Credit Reporting Act (''FCRA'') by the Dodd-Frank Act and to clarify the model notice.

DATES: 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 Risk-Based Pricing 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 311 of the FACT Act added section 615(h), 15 U.S.C. 1681m(h), to the FCRA to address risk-based pricing. Risk-based pricing refers to the practice of setting or adjusting the price and other terms of credit offered or extended to a particular consumer to reflect the risk of nonpayment by that consumer. Information from a consumer report is often used in evaluating the risk posed by the consumer. Creditors that engage in risk-based pricing generally offer more favorable terms to consumers with good credit histories and less favorable terms to consumers with poor credit histories.

Under section 615(h) of the FCRA, a person generally must provide a risk-based pricing notice to a consumer when the person uses a consumer report in connection with an extension of credit and, based in whole or in part on the consumer report, extends credit to the consumer on terms materially less favorable than the most favorable terms available to a substantial proportion of consumers. The risk-based pricing notice is designed primarily to improve the accuracy of consumer reports by alerting consumers to the existence of negative information in their consumer reports so consumers can, if they choose, check their consumer reports for accuracy and correct any inaccurate information. The Federal Reserve Board and the Commission jointly published regulations implementing these risk-based pricing provisions on January 15, 2010.[1] The Rule was then amended in July 2011 to include a requirement that, if a credit score is used in making the credit decision, the creditor must disclose that score and certain information relating to the credit score.[2]

B. Dodd-Frank Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') was signed into law in 2010.[3] 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.[4] Accordingly, in 2012, the Commission rescinded several of its FCRA rules, which had been replaced by rules issued by the CFPB.[5] The FTC retained rulemaking authority for other rules promulgated under the Acts to the extent the rules apply to motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act[6] predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.[7] The retained rules include the Risk-Based Pricing Rule, which now applies only to motor vehicle dealers that use consumer reports or credit scores for risk-based pricing.[8] Consumer report or credit score users that are not motor vehicle dealers are covered by the CFPB's rule.[9]

II. Regulatory Review of the Risk-Based Pricing Notice Rule

On October 8, 2020, the Commission solicited comments on the Risk-Based Pricing Rule. The Commission sought information about the costs and benefits of the Rule, and its regulatory and economic impact. In addition, the Commission proposed amending part 640 to narrow the scope of the Rule to motor vehicle dealers excluded from Consumer Financial Protection Bureau jurisdiction as described in the Dodd-Frank Act and remove examples that did not apply to motor vehicle dealers. The Commission received one comment related to the Risk-Based Pricing Rule.[10]

III. Overview of Final Rule

A. Scope

The Commission promulgated the Risk-Based Pricing Rule at a time when it had rulemaking authority for a

[1] 75 FR 2723 (January 15, 2010).

[2] 76 FR 41602 (July 15, 2011).

[3] Public Law 111–203 (2010).

[4] 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).

[5] 77 FR 22200 (April 13, 2012); 12 U.S.C. 5519.

[6] 15 U.S.C. 5519.

[7] 77 FR 22200.

[8] *Id.* The Rule also sets forth requirements for entities that use credit scores. *See, e.g.,* 16 CFR 640.3(b). For ease of reference, in this supplementary information section users of consumer reports includes users of credit scores.

[9] 12 CFR 1022.70–75.

[10] The comments are available at *www.regulations.gov/document/FTC-2020-0072-0001/comment.* The Commission also received two comments that addressed regulation of lenders and motor vehicle dealers generally. Both comments argued such regulation was needed.

broader group of consumer report users. While the Dodd-Frank Act did not change the Commission's enforcement authority for the Risk-Based Pricing Rule, it did narrow the Commission's rulemaking authority with respect to the Rule. It now covers only users of consumer reports that are motor vehicle dealers.[11] The amendments in the Dodd-Frank Act necessitate technical revisions to the Risk-Based Pricing Rule to ensure the regulation is consistent with the text of the amended FCRA. Accordingly, the Final Rule amends the Risk-Based Pricing Rule to properly reflect the Rule's scope.

The Final Rule amends section 640.1(a) to narrow the description of the scope of the Risk-Based Pricing Rule to motor vehicle dealers excluded from Consumer Financial Protection Bureau jurisdiction as described in 12 U.S.C. 5519. It does so by replacing the broad term ''person'' with ''motor vehicle dealer,'' as defined in amended section 640.2. The term ''motor vehicle dealer'' replaces ''person'' throughout the Rule, whenever ''person'' is used to describe the entity covered by the Rule. In provisions where ''person'' does not refer to a motor vehicle dealer covered by the Rule, such as sections 640.4(c)(2) and 640.6(b)(2), the term ''person'' is retained.[12]

The Final Rule removes section 640.1(b), which describes the process by which the Commission worked with the Federal Reserve Board to initially issue the Risk-Based Pricing Rule and states the Commission's and the Board's rules are substantively identical. The Final Rule removes this section because the Dodd-Frank Act transferred the Board's rulemaking authority for the Risk-Based Pricing Rule to the CFPB.

The Final Rule amends section 640.2 to add a definition of ''motor vehicle dealer'' that defines motor vehicle dealers as those entities excluded from the CFPB's jurisdiction under the Dodd-Frank Act.[13] The amendment also updates the definition of ''open-end credit'' by replacing the statutory reference to 15 U.S.C. 1602(i) with a citation to 15 U.S.C. 1602(j). It also changes references to the Federal Reserve Board's regulation to the CFPB's regulation.

In addition, the Final Rule updates references to the risk-based pricing notices in sections 640.4(a)(1)(viii), 640.4(a)(2)(viii), 640.5(d)(1)(ii)(I), 640.5(e)(1)(ii)(L), and 640.5(f)(iii)(I) from the Board's website to the CFPB's website to reflect the CFPB's authority under the Dodd-Frank Act.

B. Examples

The Rule contains examples that apply to entities no longer within the scope of the Rule due to the Dodd-Frank Act. Retaining these examples might lead to confusion about the actual scope of the Risk-Based Pricing Rule. Accordingly, in addition to changing the term ''person'' to ''motor vehicle dealers'' in some examples as discussed above, the Final Rule modifies some of the examples to provide clearer guidance to financial institutions that are covered motor vehicle dealers. For example, the Final Rule removes references to utility companies and charge cards (section 640.2(n)(3)) and to student loans, secured and unsecured credit cards, and fixed and variable rate mortgages (section 640.3(b)(1)(5)). The Final Rule also replaces references to ''credit card issuers'' with ''motor vehicle dealers'' (sections 640.4(d)(2); 640.5(a)(2); 640.5(c)(3)). These modifications to the cited examples are not intended to modify the substantive requirements of the Rule, as the examples simply illustrate the Rule's application in a particular context.[14]

C. Comment

The sole commenter on the Rule, the East Bay Community Law Center (''East Bay''), stated the Rule is an important tool in ensuring a more accurate credit reporting system. East Bay pointed to research that indicates inaccuracies are common in consumer reports,[15] and cited statements from consumers about the negative impact such inaccuracies can have on their lives.[16] East Bay also presented evidence such inaccuracies can have a greater impact on lower-income and minority consumers.[17] East Bay made two suggestions for additional amendments to the Rule that it argued would help address these problems.[18] First, East Bay suggested the Commission modify the Rule to ''disincentivize or prevent credit institutions from using risk-based pricing when offering loans to individuals with poor credit'' by requiring ''credit institutions [to] raise the credit cut off point, thereby preventing consumers with poor credit from gaining access to potentially predatory contracts.'' [19] The Commission shares the commenter's concern about predatory financial practices aimed at people with lower income, and has brought numerous cases to challenge such practices.[20] Such enforcement is ever more important. However, the Risk-Based Pricing Rule's primary purpose is to inform consumers when they have received less favorable terms for credit based on their consumer report or credit score.[21] There is no evidence that, in enacting Section 311 of the FACT Act, Congress intended to discourage or prevent companies from extending credit to consumers with poor (*e.g.,* below a particular prescribed threshold) or no credit histories, which would be the likely result of any regulation that prevented the use of risk-based pricing for those consumers.[22] Accordingly, the Commission declines to adopt this suggestion.

East Bay also urged the Commission to amend the Rule to require that risk-based pricing notices include ''detailed guidance [to consumers] on what specific changes they should make to improve their credit scores and qualify for a better loan.'' [23] The Commission agrees that information for consumers about improving their credit is valuable, and provides guidance in its consumer education materials, as does the CFPB.[24] When the consumer's credit score is used in determining pricing, the Rule already requires companies to identify key factors that affected the consumer's

[11] 15 U.S.C. 1681s(e)(1); 12 U.S.C. 5519.

[12] For consistency, the proposed amendments also change any use of the term ''auto dealer'' to ''motor vehicle dealer.'' *See, e.g.,* 16 CFR 640.4(c)(2)(ii).

[13] 12 U.S.C. 5519.

[14] The Commission recognizes there are substantive provisions of the Risk-Based Pricing Rule that typically would not apply to motor vehicle dealers. For example, motor vehicle dealers rarely issue credit cards, even though that term is defined broadly as ''any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.'' The Commission has chosen, however, not to remove these provisions from the Rule for two reasons. First, the current Rule is substantively identical to the CFPB's risk-based pricing rule. The Commission believes it is beneficial to maintain this conformity and has opted to make no substantive changes to the rule. Second, to the extent motor vehicle dealers do not engage in particular conduct, *e.g.* issuing credit cards, then those requirements would simply not apply.

[15] *See, e.g.,* Mistakes Do Happen: A Look at Errors in Consumer Credit Reports, Nat'l Ass'n of State PIRGs, 4 (2004), available at *https://uspirg.org/sites/pirg/files/reports/Mistakes_Do_Happen_2004_USPIRG.pdf.*

[16] East Bay Law Center (Comment 3) at 2–3.

[17] *Id.* at 6–7.

[18] *Id.* at 8–9.

[19] *Id.* at 8.

[20] *See, e.g., FTC* v. *Lead Express, Inc.,* Case No. 2:20–cv–00840–JAD–NJK (D. Nev. May 22, 2020); *FTC* v. *AMG Services, Inc.,* Case No. 212–cv–00536 (D. Nev. April 2, 2012); *FTC* v. *First Alliance Mortgage Company,* Case No. SACV 00–964 (C.D. Cal. March 21, 2002).

[21] *See* 15 U.S.C. 1681m(h)(1).

[22] Moreover, as the Rule covers only users of consumer reports who are motor vehicle dealers, such a credit cut-off would not apply to the far larger group of entities covered by the CFPB's corresponding rule.

[23] East Bay Community Law Center (Comment 3), at 9.

[24] *See, e.g., www.consumer.ftc.gov/articles/understanding-your-credit; www.consumerfinance.gov/learnmore.*

credit score. The Commission agrees with East Bay that it is important to make it as easy as possible for consumers to find information to help them improve their credit. The Commission therefore is changing the link provided in the model notice from a general link to the FTC website. In order to better direct consumers to appropriate educational materials on the FTC website that relate specifically to this issue, the Commission is amending its model notice to change the address of the FTC website in the notice to *ftc.gov/creditnotice*.[25] The Commission has consulted with the CFPB concerning this change to the Commission's model notice.

IV. Paperwork Reduction Act

The Risk-Based Pricing 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 September 30, 2020 (OMB Control No. 3084–0145). Under the existing clearance, the FTC has attributed to itself the estimated burden regarding all motor vehicle dealers and then shares equally the remaining estimated PRA burden with the CFPB for other persons for which both agencies have enforcement authority regarding the Risk-Based Pricing Rule.

The Final Rule amends 16 CFR part 640 and Appendix A to part 698. 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. Although the Final Rule slightly amends the model notice, motor vehicle dealers may continue to use existing notices and still comply with the Final Rule. 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.[26] The Commission published an Initial Regulatory Flexibility Analysis in order to inquire into the impact of the Proposed Rule on small entities.[27] The Commission received no responsive comments.

The Commission does not believe this amendment has the threshold impact on small entities. The amendment effectuates 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. Although the Final Rule adopts a slightly revised model notice, motor vehicle dealers may continue to use any existing notices based on previous models and still comply with the Final Rule. 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 amending the Risk-Based Pricing Rule will not have a significant economic impact on a substantial number of small businesses.

Although the Commission certifies under the RFA 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 that 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 will 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 amendment 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).

Final Rule Language

List of Subjects in 16 CFR Part 640 and 698

Consumer protection, Credit, Trade practices.

For the reasons stated above, the Federal Trade Commission amends parts 640 and 698 of title 16 of the Code of Federal Regulations as follows:

■ 1. Revise part 640 to read as follows:

PART 640—DUTIES OF CREDITORS REGARDING RISK-BASED PRICING

Sec.
640.1 Scope.
640.2 Definitions.
640.3 General requirements for risk-based pricing notices.
640.4 Content, form, and timing of risk-based pricing notices.
640.5 Exceptions.
640.6 Rules of Construction.

Authority: Pub. L. 108–159, sec. 311; 15 U.S.C. 1681m(h); 12 U.S.C. 5519(d).

[25] The Commission recognizes the model notices for this Rule contain versions of the notice unlikely to be used by motor vehicle dealers, such as the version for credit secured by one to four units of residential real property. The Commission is retaining these models in order to remain consistent with the CFPB's models.

[26] 5 U.S.C. 603–605.

[27] 85 FR 63462, 63465 (October 8, 2020).

§ 640.1 Scope.

(a) *Coverage*—(1) *In general.* This part applies to any motor vehicle dealer as defined in § 640.2 of this part that both—

(i) Uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to a consumer that is primarily for personal, family, or household purposes; and

(ii) Based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to the consumer on material terms that are materially less favorable than the most favorable material terms available to a substantial proportion of consumers from or through that motor vehicle dealer.

(2) *Business credit excluded.* This part does not apply to an application for, or a grant, extension, or other provision of, credit to a consumer or to any other applicant primarily for a business purpose.

(b) *Enforcement.* The provisions of this part will be enforced in accordance with the enforcement authority set forth in sections 621(a) and (b) of the FCRA.

§ 640.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Adverse action* has the same meaning as in 15 U.S.C. 1681a(k)(1)(A).

(b) *Annual percentage rate* has the same meaning as in 12 CFR 1026.14(b) with respect to an open-end credit plan and as in 12 CFR 1026.22 with respect to closed-end credit.

(c) *Closed-end credit* has the same meaning as in 12 CFR 1026.2(a)(10).

(d) *Consumer* has the same meaning as in 15 U.S.C. 1681a(c).

(e) *Consummation* has the same meaning as in 12 CFR 1026.2(a)(13).

(f) *Consumer report* has the same meaning as in 15 U.S.C. 1681a(d).

(g) *Consumer reporting agency* has the same meaning as in 15 U.S.C. 1681a(f).

(h) *Credit* has the same meaning as in 15 U.S.C. 1681a(r)(5).

(i) *Creditor* has the same meaning as in 15 U.S.C. 1681a(r)(5).

(j) *Credit card* has the same meaning as in 15 U.S.C. 1681a(r)(2).

(k) *Credit card issuer* has the same meaning as in 15 U.S.C. 1681a(r)(1)(A).

(l) *Credit score* has the same meaning as in 15 U.S.C. 1681g(f)(2)(A).

(m) *Firm offer of credit* has the same meaning as in 15 U.S.C. 1681a(l).

(n) *Material terms* means—

(1)(i) Except as otherwise provided in paragraphs (n)(1)(ii) and (n)(3) of this section, in the case of credit extended under an open-end credit plan, the annual percentage rate required to be disclosed under 12 CFR 226.6(a)(1)(ii) or 12 CFR 226.6(b)(2)(i), excluding any temporary initial rate lower than the rate that will apply after the temporary rate expires, any penalty rate that will apply upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, and any fixed annual percentage rate option for a home equity line of credit;

(ii) In the case of a credit card (other than a credit card used to access a home equity line of credit or a charge card), the annual percentage rate required to be disclosed under 12 CFR 226.6(b)(2)(i) that applies to purchases (''purchase annual percentage rate'') and no other annual percentage rate, or in the case of a credit card that has no purchase annual percentage rate, the annual percentage rate that varies based on information in a consumer report and that has the most significant financial impact on consumers;

(2) In the case of closed-end credit, the annual percentage rate required to be disclosed under 12 CFR 226.17(c) and 226.18(e); and

(3) In the case of credit for which there is no annual percentage rate, the financial term that varies based on information in a consumer report and that has the most significant financial impact on consumers, such as a deposit required in connection with an extension of credit.

(o) *Materially less favorable* means, when applied to material terms, that the terms granted, extended, or otherwise provided to a consumer differ from the terms granted, extended, or otherwise provided to another consumer from or through the same motor vehicle dealer such that the cost of credit to the first consumer would be significantly greater than the cost of credit granted, extended, or otherwise provided to the other consumer. For purposes of this definition, factors relevant to determining the significance of a difference in cost include the type of credit product, the term of the credit extension, if any, and the extent of the difference between the material terms granted, extended, or otherwise provided to the two consumers.

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

(q) *Open-end credit plan* has the same meaning as in 15 U.S.C. 1602(j), as interpreted by the Board in Regulation Z and the Official Staff Commentary to Regulation Z.

(r) *Person* has the same meaning as in 15 U.S.C. 1681a(b).

§ 640.3 General requirements for risk-based pricing notices.

(a) *In general.* Except as otherwise provided in this part, a motor vehicle dealer must provide to a consumer a notice (''risk-based pricing notice'') in the form and manner required by this part if the motor vehicle dealer both—

(1) Uses a consumer report in connection with an application for, or a grant, extension, or other provision of, credit to that consumer primarily for personal, family, or household purposes; and

(2) Based in whole or in part on the consumer report, grants, extends, or otherwise provides credit to that consumer on material terms that are materially less favorable than the most favorable material terms available to a substantial proportion of consumers from or through that motor vehicle dealer.

(b) *Determining which consumers must receive a notice.* A motor vehicle dealer may determine whether paragraph (a) of this section applies by directly comparing the material terms offered to each consumer and the material terms offered to other consumers for a specific type of credit product. For purposes of this section, a ''specific type of credit product'' means one or more credit products with similar features designed for similar purposes. Examples of a specific type of credit product include new automobile loans and used automobile loans. As an alternative to making this direct comparison, a motor vehicle dealer may make the determination by using one of the following methods:

(1) *Credit score proxy method*—(i) *In general.* A motor vehicle dealer that sets the material terms of credit granted, extended, or otherwise provided to a consumer, based in whole or in part on a credit score, may comply with the requirements of paragraph (a) of this section by—

(A) Determining the credit score (hereafter referred to as the ''cutoff score'') that represents the point at which approximately 40 percent of the consumers to whom it grants, extends, or provides credit have higher credit scores and approximately 60 percent of the consumers to whom it grants, extends, or provides credit have lower credit scores; and

(B) Providing a risk-based pricing notice to each consumer to whom it grants, extends, or provides credit whose credit score is lower than the cutoff score.

(ii) *Alternative to the 40/60 cutoff score determination.* In the case of credit that has been granted, extended, or provided on the most favorable

material terms to more than 40 percent of consumers, a motor vehicle dealer may, at its option, set its cutoff score at a point at which the approximate percentage of consumers who historically have been granted, extended, or provided credit on material terms other than the most favorable terms would receive risk-based pricing notices under this section.

(iii) *Determining the cutoff score*—(A) *Sampling approach.* A motor vehicle dealer that currently uses risk-based pricing with respect to the credit products it offers must calculate the cutoff score by considering the credit scores of all or a representative sample of the consumers to whom it has granted, extended, or provided credit for a specific type of credit product.

(B) *Secondary source approach in limited circumstances.* A motor vehicle dealer that is a new entrant into the credit business, introduces new credit products, or starts to use risk-based pricing with respect to the credit products it currently offers may initially determine the cutoff score based on information derived from appropriate market research or relevant third-party sources for a specific type of credit product, such as research or data from companies that develop credit scores. A motor vehicle dealer that acquires a credit portfolio as a result of a merger or acquisition may determine the cutoff score based on information from the party which it acquired, with which it merged, or from which it acquired the portfolio.

(C) *Recalculation of cutoff scores.* A motor vehicle dealer using the credit score proxy method must recalculate its cutoff score(s) no less than every two years in the manner described in paragraph (b)(1)(iii)(A) of this section. A motor vehicle dealer using the credit score proxy method using market research, third-party data, or information from a party which it acquired, with which it merged, or from which it acquired the portfolio as permitted by paragraph (b)(1)(iii)(B) of this section generally must calculate a cutoff score(s) based on the scores of its own consumers in the manner described in paragraph (b)(1)(iii)(A) of this section within one year after it begins using a cutoff score derived from market research, third-party data, or information from a party which it acquired, with which it merged, or from which it acquired the portfolio. If such a motor vehicle dealer does not grant, extend, or provide credit to new consumers during that one-year period such that it lacks sufficient data with which to recalculate a cutoff score based on the credit scores of its own consumers, the motor vehicle dealer may continue to use a cutoff score derived from market research, third-party data, or information from a party which it acquired, with which it merged, or from which it acquired the portfolio as provided in paragraph (b)(1)(iii)(B) until it obtains sufficient data on which to base the recalculation. However, the motor vehicle dealer must recalculate its cutoff score(s) in the manner described in paragraph (b)(1)(iii)(A) of this section within two years, if it has granted, extended, or provided credit to some new consumers during that two-year period.

(D) *Use of two or more credit scores.* A motor vehicle dealer that generally uses two or more credit scores in setting the material terms of credit granted, extended, or provided to a consumer must determine the cutoff score using the same method the motor vehicle dealer uses to evaluate multiple scores when making credit decisions. These evaluation methods may include, but are not limited to, selecting the low, median, high, most recent, or average credit score of each consumer to whom it grants, extends, or provides credit. If a motor vehicle dealer that uses two or more credit scores does not consistently use the same method for evaluating multiple credit scores (*e.g.,* if the motor vehicle dealer sometimes chooses the median score and other times calculates the average score), the motor vehicle dealer must determine the cutoff score using a reasonable means. In such cases, use of any one of the methods that the motor vehicle dealer regularly uses or the average credit score of each consumer to whom it grants, extends, or provides credit is deemed to be a reasonable means of calculating the cutoff score.

(iv) *Credit score not available.* For purposes of this section, a motor vehicle dealer using the credit score proxy method who grants, extends, or provides credit to a consumer for whom a credit score is not available must assume that the consumer receives credit on material terms that are materially less favorable than the most favorable credit terms offered to a substantial proportion of consumers from or through that motor vehicle dealer and must provide a risk-based pricing notice to the consumer.

(v) *Examples.* (A) A motor vehicle dealer engages in risk-based pricing and the annual percentage rates it offers to consumers are based in whole or in part on a credit score. The motor vehicle dealer takes a representative sample of the credit scores of consumers to whom it extended loans within the preceding three months. The motor vehicle dealer determines that approximately 40 percent of the sampled consumers have a credit score at or above 720 (on a scale of 350 to 850) and approximately 60 percent of the sampled consumers have a credit score below 720. Thus, the motor vehicle dealer selects 720 as its cutoff score. A consumer applies to the motor vehicle dealer for a loan. The motor vehicle dealer obtains a credit score for the consumer. The consumer's credit score is 700. Since the consumer's 700 credit score falls below the 720 cutoff score, the motor vehicle dealer must provide a risk-based pricing notice to the consumer.

(B) A motor vehicle dealer engages in risk-based pricing, and the annual percentage rates it offers to consumers are based in whole or in part on a credit score. The motor vehicle dealer takes a representative sample of the consumers to whom it extended loans over the preceding six months. The motor vehicle dealer determines that approximately 80 percent of the sampled consumers received credit at its lowest annual percentage rate, and 20 percent received credit at a higher annual percentage rate. Approximately 80 percent of the sampled consumers have a credit score at or above 750 (on a scale of 350 to 850), and 20 percent have a credit score below 750. Thus, the motor vehicle dealer selects 750 as its cutoff score. A consumer applies to the motor vehicle dealer for an automobile loan. The motor vehicle dealer obtains a credit score for the consumer. The consumer's credit score is 740. Since the consumer's 740 credit score falls below the 750 cutoff score, the motor vehicle dealer must provide a risk-based pricing notice to the consumer.

(C) A motor vehicle dealer engages in risk-based pricing, obtains credit scores from one of the nationwide consumer reporting agencies, and uses the credit score proxy method to determine which consumers must receive a risk-based pricing notice. A consumer applies to the motor vehicle dealer for credit to finance the purchase of an automobile. A credit score about that consumer is not available from the consumer reporting agency from which the lender obtains credit scores. The motor vehicle dealer nevertheless grants, extends, or provides credit to the consumer. The motor vehicle dealer must provide a risk-based pricing notice to the consumer.

(2) *Tiered pricing method*—(i) *In general.* A motor vehicle dealer that sets the material terms of credit granted, extended, or provided to a consumer by placing the consumer within one of a discrete number of pricing tiers for a specific type of credit product, based in

whole or in part on a consumer report, may comply with the requirements of paragraph (a) of this section by providing a risk-based pricing notice to each consumer who is not placed within the top pricing tier or tiers, as described below.

(ii) *Four or fewer pricing tiers.* If a motor vehicle dealer using the tiered pricing method has four or fewer pricing tiers, the motor vehicle dealer complies with the requirements of paragraph (a) of this section by providing a risk-based pricing notice to each consumer to whom it grants, extends, or provides credit who does not qualify for the top tier (that is, the lowest-priced tier). For example, a motor vehicle dealer that uses a tiered pricing structure with annual percentage rates of 8, 10, 12, and 14 percent would provide the risk-based pricing notice to each consumer to whom it grants, extends, or provides credit at annual percentage rates of 10, 12, and 14 percent.

(iii) *Five or more pricing tiers.* If a motor vehicle dealer using the tiered pricing method has five or more pricing tiers, the motor vehicle dealer complies with the requirements of paragraph (a) of this section by providing a risk-based pricing notice to each consumer to whom it grants, extends, or provides credit who does not qualify for the top two tiers (that is, the two lowest-priced tiers) and any other tier that, together with the top tiers, comprise no less than the top 30 percent but no more than the top 40 percent of the total number of tiers. Each consumer placed within the remaining tiers must receive a risk-based pricing notice. For example, if a motor vehicle dealer has nine pricing tiers, the top three tiers (that is, the three lowest-priced tiers) comprise no less than the top 30 percent but no more than the top 40 percent of the tiers. Therefore, a motor vehicle dealer using this method would provide a risk-based pricing notice to each consumer to whom it grants, extends, or provides credit who is placed within the bottom six tiers.

(c) *Application to credit card issuers*—(1) *In general.* A credit card issuer subject to the requirements of paragraph (a) of this section may use one of the methods set forth in paragraph (b) of this section to identify consumers to whom it must provide a risk-based pricing notice. Alternatively, a credit card issuer may satisfy its obligations under paragraph (a) of this section by providing a risk-based pricing notice to a consumer when—

(i) A consumer applies for a credit card either in connection with an application program, such as a direct-mail offer or a take-one application, or in response to a solicitation under 12 CFR 226.5a, and more than a single possible purchase annual percentage rate may apply under the program or solicitation; and

(ii) Based in whole or in part on a consumer report, the credit card issuer provides a credit card to the consumer with an annual percentage rate referenced in § 640.2(n)(1)(ii) that is greater than the lowest annual percentage rate referenced in § 640.2(n)(1)(ii) available in connection with the application or solicitation.

(2) *No requirement to compare different offers.* A credit card issuer is not subject to the requirements of paragraph (a) of this section and is not required to provide a risk-based pricing notice to a consumer if—

(i) The consumer applies for a credit card for which the card issuer provides a single annual percentage rate referenced in § 640.2(n)(1)(ii), excluding a temporary initial rate lower than the rate that will apply after the temporary rate expires and a penalty rate that will apply upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit; or

(ii) The credit card issuer offers the consumer the lowest annual percentage rate referenced in § 640.2(n)(1)(ii) available under the credit card offer for which the consumer applied, even if a lower annual percentage rate referenced in § 640.2(n)(1)(ii) is available under a different credit card offer issued by the card issuer.

(3) *Examples.* (i) A credit card issuer sends a solicitation to the consumer that discloses several possible purchase annual percentage rates that may apply, such as 10, 12, or 14 percent, or a range of purchase annual percentage rates from 10 to 14 percent. The consumer applies for a credit card in response to the solicitation. The card issuer provides a credit card to the consumer with a purchase annual percentage rate of 12 percent based in whole or in part on a consumer report. Unless an exception applies under § 640.5, the card issuer may satisfy its obligations under paragraph (a) of this section by providing a risk-based pricing notice to the consumer because the consumer received credit at a purchase annual percentage rate greater than the lowest purchase annual percentage rate available under that solicitation.

(ii) The same facts as in the example in paragraph (c)(3)(i) of this section, except that the card issuer provides a credit card to the consumer at a purchase annual percentage rate of 10 percent. The card issuer is not required to provide a risk-based pricing notice to the consumer even if, under a different credit card solicitation, that consumer or other consumers might qualify for a purchase annual percentage rate of 8 percent.

(d) *Account review*—(1) *In general.* Except as otherwise provided in this part, a motor vehicle dealer is subject to the requirements of paragraph (a) of this section and must provide a risk-based pricing notice to a consumer in the form and manner required by this part if the motor vehicle dealer—

(i) Uses a consumer report in connection with a review of credit that has been extended to the consumer; and

(ii) Based in whole or in part on the consumer report, increases the annual percentage rate (the annual percentage rate referenced in § 640.2(n)(1)(ii) in the case of a credit card).

(2) *Example.* A credit card issuer periodically obtains consumer reports for the purpose of reviewing the terms of credit it has extended to consumers in connection with credit cards. As a result of this review, the credit card issuer increases the purchase annual percentage rate applicable to a consumer's credit card based in whole or in part on information in a consumer report. The credit card issuer is subject to the requirements of paragraph (a) of this section and must provide a risk-based pricing notice to the consumer.

§ 640.4 Content, form, and timing of risk-based pricing notices.

(a) *Content of the notice*—(1) *In general.* The risk-based pricing notice required by § 640.3(a) or (c) must include:

(i) A statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;

(ii) A statement that the terms offered, such as the annual percentage rate, have been set based on information from a consumer report;

(iii) A statement that the terms offered may be less favorable than the terms offered to consumers with better credit histories;

(iv) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;

(v) The identity of each consumer reporting agency that furnished a consumer report used in the credit decision;

(vi) A statement that federal law gives the consumer the right to obtain a copy of a consumer report from the consumer reporting agency or agencies identified

in the notice without charge for 60 days after receipt of the notice;

(vii) A statement informing the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies;

(viii) A statement directing consumers to the websites of the Consumer Financial Protection Bureau and Federal Trade Commission to obtain more information about consumer reports; and

(ix) If a credit score of the consumer to whom a motor vehicle dealer grants, extends, or otherwise provides credit is used in setting the material terms of credit:

(A) A statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history;

(B) The credit score used by the motor vehicle dealer in making the credit decision;

(C) The range of possible credit scores under the model used to generate the credit score;

(D) All of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquiries made with respect to the consumer report, the number of key factors shall not exceed five;

(E) The date on which the credit score was created; and

(F) The name of the consumer reporting agency or other person that provided the credit score.

(2) *Account review.* The risk-based pricing notice required by § 640.3(d) must include:

(i) A statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that credit history;

(ii) A statement that the credit card issuer has conducted a review of the account using information from a consumer report;

(iii) A statement that as a result of the review, the annual percentage rate on the account has been increased based on information from a consumer report;

(iv) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;

(v) The identity of each consumer reporting agency that furnished a consumer report used in the account review;

(vi) A statement that federal law gives the consumer the right to obtain a copy of a consumer report from the consumer reporting agency or agencies identified in the notice without charge for 60 days after receipt of the notice;

(vii) A statement informing the consumer how to obtain a consumer report from the consumer reporting agency or agencies identified in the notice and providing contact information (including a toll-free telephone number, where applicable) specified by the consumer reporting agency or agencies;

(viii) A statement directing consumers to the websites of the Consumer Financial Protection Bureau and Federal Trade Commission to obtain more information about consumer reports; and

(ix) If a credit score of the consumer whose extension of credit is under review is used in increasing the annual percentage rate:

(A) A statement that a credit score is a number that takes into account information in a consumer report, that the consumer's credit score was used to set the terms of credit offered, and that a credit score can change over time to reflect changes in the consumer's credit history;

(B) The credit score used by the credit card issuer in making the credit decision;

(C) The range of possible credit scores under the model used to generate the credit score;

(D) All of the key factors that adversely affected the credit score, which shall not exceed four key factors, except that if one of the key factors is the number of enquiries made with respect to the consumer report, the number of key factors shall not exceed five;

(E) The date on which the credit score was created; and

(F) The name of the consumer reporting agency or other person that provided the credit score.

(b) *Form of the notice*—(1) *In general.* The risk-based pricing notice required by § 640.3(a), (c), or (d) must be:

(i) Clear and conspicuous; and

(ii) Provided to the consumer in oral, written, or electronic form.

(2) *Model forms.* Model forms of the risk-based pricing notice required by Sec. 640.3(a) and (c) are contained in appendices A–1 and A–6 of 16 CFR part 698. Appropriate use of Model form A–1 or A–6 is deemed to comply with the requirements of § 640.3(a) and (c). Model forms of the risk-based pricing notice required by § 640.3(d) are contained in appendices A–2 and A–7 of 16 CFR part 698. Appropriate use of Model form A–2 or A–7 is deemed to comply with the requirements of § 640.3(d). Use of the model forms is optional.

(c) *Timing*—(1) *General.* Except as provided in paragraph (c)(3) of this section, a risk-based pricing notice must be provided to the consumer—

(i) In the case of a grant, extension, or other provision of closed-end credit, before consummation of the transaction, but not earlier than the time the decision to approve an application for, or a grant, extension, or other provision of, credit, is communicated to the consumer by the motor vehicle dealer required to provide the notice;

(ii) In the case of credit granted, extended, or provided under an open-end credit plan, before the first transaction is made under the plan, but not earlier than the time the decision to approve an application for, or a grant, extension, or other provision of, credit is communicated to the consumer by the motor vehicle dealer required to provide the notice; or

(iii) In the case of a review of credit that has been extended to the consumer, at the time the decision to increase the annual percentage rate (annual percentage rate referenced in § 640.2(n)(1)(ii) in the case of a credit card) based on a consumer report is communicated to the consumer by the motor vehicle dealer required to provide the notice, or if no notice of the increase in the annual percentage rate is provided to the consumer prior to the effective date of the change in the annual percentage rate (to the extent permitted by law), no later than five days after the effective date of the change in the annual percentage rate.

(2) *Application to certain automobile lending transactions.* When a person to whom a credit obligation is initially payable grants, extends, or provides credit to a consumer for the purpose of financing the purchase of an automobile from a motor vehicle dealer or other party not affiliated with the person, any requirement to provide a risk-based pricing notice pursuant to this part is satisfied if the person:

(i) Provides a notice described in § 640.3(a), 640.5(e), or 640.5(f) to the consumer within the time periods set forth in paragraph (c)(1)(i) of this section, § 640.5(e)(3), or 640.5(f)(4), as applicable; or

(ii) Arranges to have the motor vehicle dealer or other party provide a notice

described in §§ 640.3(a), 640.5(e), or 640.5(f) to the consumer on its behalf within the time periods set forth in paragraph (c)(1)(i) of this section, § 640.5(e)(3), or § 640.5(f)(4), as applicable, and maintains reasonable policies and procedures to verify the motor vehicle dealer or other party provides such notice to the consumer within the applicable time periods. If the person arranges to have the motor vehicle dealer or other party provide a notice described in § 640.5(e), the person's obligation is satisfied if the consumer receives a notice containing a credit score obtained by the dealer or other party, even if a different credit score is obtained and used by the person on whose behalf the notice is provided.

(3) *Timing requirements for contemporaneous purchase credit.* When credit under an open-end credit plan is granted, extended, or provided to a consumer in person or by telephone for the purpose of financing the contemporaneous purchase of goods or services, any risk-based pricing notice required to be provided pursuant to this part (or the disclosures permitted under § 640.5(e) or (f)) may be provided at the earlier of:

(i) The time of the first mailing by the motor vehicle dealer to the consumer after the decision is made to approve the grant, extension, or other provision of open-end credit, such as in a mailing containing the account agreement or a credit card; or

(ii) Within 30 days after the decision to approve the grant, extension, or other provision of credit.

(d) *Multiple credit scores*—(1) *In general.* When a motor vehicle dealer obtains or creates two or more credit scores and uses one of those credit scores in setting the material terms of credit, for example, by using the low, middle, high, or most recent score, the notices described in paragraphs (a)(1) and (2) of this section must include that credit score and information relating to that credit score required by paragraphs (a)(1)(ix) and (a)(2)(ix) of this section. When a motor vehicle dealer obtains or creates two or more credit scores and uses multiple credit scores in setting the material terms of credit by, for example, computing the average of all the credit scores obtained or created, the notices described in paragraphs (a)(1) and (2) of this section must include one of those credit scores and information relating to credit scores required by paragraphs (a)(1)(ix) and (a)(2)(ix) of this section. The notice may, at the motor vehicle dealer's option, include more than one credit score, along with the additional information specified in paragraphs (a)(1)(ix) and (a)(2)(ix) of this section for each credit score disclosed.

(2) *Examples.* (i) A motor vehicle dealer that uses consumer reports to set the material terms of automobile loans granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies and uses the low score when determining the material terms it will offer to the consumer. That motor vehicle dealer must disclose the low score in the notices described in paragraphs (a)(1) and (2) of this section.

(ii) A motor vehicle dealer that uses consumer reports to set the material terms of automobile loans granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies, each of which it uses in an underwriting program in order to determine the material terms it will offer to the consumer. That motor vehicle dealer may choose one of these scores to include in the notices described in paragraph (a)(1) and (2) of this section.

§ 640.5 Exceptions.

(a) *Application for specific terms*—(1) *In general.* A motor vehicle dealer is not required to provide a risk-based pricing notice to the consumer under § 640.3(a) or (c) if the consumer applies for specific material terms and is granted those terms, unless those terms were specified by the motor vehicle dealer using a consumer report after the consumer applied for or requested credit and after the motor vehicle dealer obtained the consumer report. For purposes of this section, ''specific material terms'' means a single material term, or set of material terms, such as an annual percentage rate of 10 percent, and not a range of alternatives, such as an annual percentage rate that may be 8, 10, or 12 percent, or between 8 and 12 percent.

(2) *Example.* A consumer receives a firm offer of credit from a motor vehicle dealer. The terms of the firm offer are based in whole or in part on information from a consumer report the motor vehicle dealer obtained under the FCRA's firm offer of credit provisions. The solicitation offers the consumer a loan with an annual percentage rate of 12 percent. The consumer applies for and receives a loan with an annual percentage rate of 12 percent. Other customers of the motor vehicle dealer have an annual percentage rate of 10 percent. The exception applies because the consumer applied for specific material terms and was granted those terms. Although the motor vehicle dealer specified the annual percentage rate in the firm offer of credit based in whole or in part on a consumer report, the motor vehicle dealer specified that material term before, not after, the consumer applied for or requested credit.

(b) *Adverse action notice.* A motor vehicle dealer is not required to provide a risk-based pricing notice to the consumer under § 640.3(a), (c), or (d) if the motor vehicle dealer provides an adverse action notice to the consumer under section 615(a) of the FCRA.

(c) *Prescreened solicitations*—(1) *In general.* A motor vehicle dealer is not required to provide a risk-based pricing notice to the consumer under § 640.3(a) or (c) if the motor vehicle dealer:

(i) Obtains a consumer report that is a prescreened list as described in section 604(c)(2) of the FCRA; and

(ii) Uses the consumer report for the purpose of making a firm offer of credit to the consumer.

(2) *More favorable material terms.* This exception applies to any firm offer of credit offered by a motor vehicle dealer to a consumer, even if the motor vehicle dealer makes other firm offers of credit to other consumers on more favorable material terms.

(3) *Example.* A motor vehicle dealer obtains two prescreened lists from a consumer reporting agency. One list includes consumers with high credit scores. The other list includes consumers with low credit scores. The motor vehicle dealer mails a firm offer of credit to the high credit score consumers with an annual percentage rate of 10 percent. The motor vehicle dealer also mails a firm offer of credit to the low credit score consumers with an annual percentage rate of 14 percent. The motor vehicle dealer is not required to provide a risk-based pricing notice to the low credit score consumers who receive the 14 percent offer because use of a consumer report to make a firm offer of credit does not trigger the risk-based pricing notice requirement.

(d) *Loans secured by residential real property—credit score disclosure*—(1) *In general.* A motor vehicle dealer is not required to provide a risk-based pricing notice to a consumer under § 640.3(a) or (c) if:

(i) The consumer requests from the motor vehicle dealer an extension of credit that is or will be secured by one to four units of residential real property; and

(ii) The motor vehicle dealer provides to each consumer described in paragraph (d)(1)(i) of this section a notice that contains the following—

(A) A statement that a consumer report (or credit report) is a record of the consumer's credit history and includes information about whether the

consumer pays his or her obligations on time and how much the consumer owes to creditors;

(B) A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history;

(C) A statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

(D) The information required to be disclosed to the consumer pursuant to section 609(g) of the FCRA;

(E) The distribution of credit scores among consumers who are scored under the same scoring model that is used to generate the consumer's credit score using the same scale as that of the credit score that is provided to the consumer, presented in the form of a bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar or by other clear and readily understandable graphical means, or a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers. Use of a graph or statement obtained from the person providing the credit score that meets the requirements of this paragraph (d)(1)(ii)(E) is deemed to comply with this requirement;

(F) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;

(G) A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free report from each of the nationwide consumer reporting agencies once during any 12-month period;

(H) Contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

(I) A statement directing consumers to the websites of the Board and Federal Trade Commission to obtain more information about consumer reports.

(2) *Form of the notice.* The notice described in paragraph (d)(1)(ii) of this section must be:

(i) Clear and conspicuous;

(ii) Provided on or with the notice required by section 609(g) of the FCRA;

(iii) Segregated from other information provided to the consumer, except for the notice required by section 609(g) of the FCRA; and

(iv) Provided to the consumer in writing and in a form that the consumer may keep.

(3) *Timing.* The notice described in paragraph (d)(1)(ii) of this section must be provided to the consumer at the time the disclosure required by section 609(g) of the FCRA is provided to the consumer, but in any event at or before consummation in the case of closed-end credit or before the first transaction is made under an open-end credit plan.

(4) *Multiple credit scores*—(i) *In general.* When a motor vehicle dealer obtains two or more credit scores from consumer reporting agencies and uses one of those credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer, for example, by using the low, middle, high, or most recent score, the notice described in paragraph (d)(1)(ii) of this section must include that credit score and the other information required by that paragraph. When a motor vehicle dealer obtains two or more credit scores from consumer reporting agencies and uses multiple credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer, for example, by computing the average of all the credit scores obtained, the notice described in paragraph (d)(1)(ii) of this section must include one of those credit scores and the other information required by that paragraph. The notice may, at the motor vehicle dealer's option, include more than one credit score, along with the additional information specified in paragraph (d)(1)(ii) of this section for each credit score disclosed.

(ii) *Examples.* (A) A motor vehicle dealer that uses consumer reports to set the material terms of credit granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies and uses the low score when determining the material terms it will offer to the consumer. That motor vehicle dealer must disclose the low score in the notice described in paragraph (d)(1)(ii) of this section.

(B) A motor vehicle dealer that uses consumer reports to set the material terms of mortgage credit granted, extended, or provided to consumers regularly requests credit scores from several consumer reporting agencies, each of which it uses in an underwriting program in order to determine the material terms it will offer to the consumer. That motor vehicle dealer may choose one of these scores to include in the notice described in paragraph (d)(1)(ii) of this section.

(5) *Model form.* A model form of the notice described in paragraph (d)(1)(ii) of this section consolidated with the notice required by section 609(g) of the FCRA is contained in 16 CFR part 698, appendix A. Appropriate use of Model Form A–3 is deemed to comply with the requirements of § 640.5(d). Use of the model form is optional.

(e) *Other extensions of credit—credit score disclosure*—(1) *In general.* A motor vehicle dealer is not required to provide a risk-based pricing notice to a consumer under § 640.3(a) or (c) if:

(i) The consumer requests from the motor vehicle dealer an extension of credit other than credit that is or will be secured by one to four units of residential real property; and

(ii) The motor vehicle dealer provides to each consumer described in paragraph (e)(1)(i) of this section a notice that contains the following—

(A) A statement that a consumer report (or credit report) is a record of the consumer's credit history and includes information about whether the consumer pays his or her obligations on time and how much the consumer owes to creditors;

(B) A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history;

(C) A statement that the consumer's credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

(D) The current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the consumer reporting agency for a purpose related to the extension of credit;

(E) The range of possible credit scores under the model used to generate the credit score;

(F) The distribution of credit scores among consumers who are scored under the same scoring model that is used to generate the consumer's credit score using the same scale as that of the credit score that is provided to the consumer, presented in the form of a bar graph containing a minimum of six bars that illustrates the percentage of consumers with credit scores within the range of scores reflected in each bar, or by other clear and readily understandable graphical means, or a clear and readily understandable statement informing the consumer how his or her credit score compares to the scores of other consumers. Use of a graph or statement obtained from the person providing the credit score that meets the requirements

of this paragraph (e)(1)(ii)(F) is deemed to comply with this requirement;

(G) The date on which the credit score was created;

(H) The name of the consumer reporting agency or other person that provided the credit score;

(I) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the report;

(J) A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free report from each of the nationwide consumer reporting agencies once during any 12-month period;

(K) Contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

(L) A statement directing consumers to the websites of the Federal Reserve Board and Federal Trade Commission to obtain more information about consumer reports.

(2) *Form of the notice.* The notice described in paragraph (e)(1)(ii) of this section must be:

(i) Clear and conspicuous;

(ii) Segregated from other information provided to the consumer; and

(iii) Provided to the consumer in writing and in a form that the consumer may keep.

(3) *Timing.* The notice described in paragraph (e)(1)(ii) of this section must be provided to the consumer as soon as reasonably practicable after the credit score has been obtained, but in any event at or before consummation in the case of closed-end credit or before the first transaction is made under an open-end credit plan.

(4) *Multiple credit scores*—(i) *In General.* When a motor vehicle dealer obtains two or more credit scores from consumer reporting agencies and uses one of those credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer, for example, by using the low, middle, high, or most recent score, the notice described in paragraph (e)(1)(ii) of this section must include that credit score and the other information required by that paragraph. When a motor vehicle dealer obtains two or more credit scores from consumer reporting agencies and uses multiple credit scores in setting the material terms of credit granted, extended, or otherwise provided to a consumer, for example, by computing the average of all the credit scores obtained, the notice described in paragraph (e)(1)(ii) of this section must include one of those credit scores and the other information required by that paragraph. The notice may, at the motor vehicle dealer's option, include more than one credit score, along with the additional information specified in paragraph (e)(1)(ii) of this section for each credit score disclosed.

(ii) *Examples.* The manner in which multiple credit scores are to be disclosed under this section are substantially identical to the manner set forth in the examples contained in paragraph (d)(4)(ii) of this section.

(5) *Model form.* A model form of the notice described in paragraph (e)(1)(ii) of this section is contained in 16 CFR part 698, appendix A. Appropriate use of Model Form A–4 is deemed to comply with the requirements of § 640.5(e). Use of the model form is optional.

(f) *Credit score not available*—(1) *In general.* A motor vehicle dealer is not required to provide a risk-based pricing notice to a consumer under § 640.3(a) or (c) if the motor vehicle dealer:

(i) Regularly obtains credit scores from a consumer reporting agency and provides credit score disclosures to consumers in accordance with paragraphs (d) or (e) of this section, but a credit score is not available from the consumer reporting agency from which the motor vehicle dealer regularly obtains credit scores for a consumer to whom the motor vehicle dealer grants, extends, or provides credit;

(ii) Does not obtain a credit score from another consumer reporting agency in connection with granting, extending, or providing credit to the consumer; and

(iii) Provides to the consumer a notice that contains the following—

(A) A statement that a consumer report (or credit report) includes information about the consumer's credit history and the type of information included in that history;

(B) A statement that a credit score is a number that takes into account information in a consumer report and that a credit score can change over time in response to changes in the consumer's credit history;

(C) A statement that credit scores are important because consumers with higher credit scores generally obtain more favorable credit terms;

(D) A statement that not having a credit score can affect whether the consumer can obtain credit and what the cost of that credit will be;

(E) A statement that a credit score about the consumer was not available from a consumer reporting agency, which must be identified by name, generally due to insufficient information regarding the consumer's credit history;

(F) A statement that the consumer is encouraged to verify the accuracy of the information contained in the consumer report and has the right to dispute any inaccurate information in the consumer report;

(G) A statement that federal law gives the consumer the right to obtain copies of his or her consumer reports directly from the consumer reporting agencies, including a free consumer report from each of the nationwide consumer reporting agencies once during any 12-month period;

(H) The contact information for the centralized source from which consumers may obtain their free annual consumer reports; and

(I) A statement directing consumers to the websites of the Board and Federal Trade Commission to obtain more information about consumer reports.

(2) *Example.* A motor vehicle dealer that uses consumer reports to set the material terms of credit granted, extended, or provided to consumers regularly requests credit scores from a particular consumer reporting agency and provides those credit scores and additional information to consumers to satisfy the requirements of paragraph (e) of this section. That consumer reporting agency provides to the motor vehicle dealer a consumer report on a particular consumer that contains one trade line, but does not provide the motor vehicle dealer with a credit score on that consumer. If the motor vehicle dealer does not obtain a credit score from another consumer reporting agency and, based in whole or in part on information in a consumer report, grants, extends, or provides credit to the consumer, the motor vehicle dealer may provide the notice described in paragraph (f)(1)(iii) of this section. If, however, the motor vehicle dealer obtains a credit score from another consumer reporting agency, the motor vehicle dealer may not rely upon the exception in paragraph (f) of this section, but may satisfy the requirements of paragraph (e) of this section.

(3) *Form of the notice.* The notice described in paragraph (f)(1)(iii) of this section must be:

(i) Clear and conspicuous;

(ii) Segregated from other information provided to the consumer; and

(iii) Provided to the consumer in writing and in a form that the consumer may keep.

(4) *Timing.* The notice described in paragraph (f)(1)(iii) of this section must be provided to the consumer as soon as reasonably practicable after the motor vehicle dealer has requested the credit score, but in any event not later than consummation of a transaction in the

case of closed-end credit or when the first transaction is made under an open-end credit plan.

(5) *Model form.* A model form of the notice described in paragraph (f)(1)(iii) of this section is contained in 16 CFR part 698, appendix A. Appropriate use of Model Form A–5 is deemed to comply with the requirements of § 640.5(f). Use of the model form is optional.

§ 640.6 Rules of Construction.

For purposes of this part, the following rules of construction apply:

(a) *One notice per credit extension.* A consumer is entitled to no more than one risk-based pricing notice under § 640.3(a) or (c), or one notice under § 640.5(d), (e), or (f), for each grant, extension, or other provision of credit. Notwithstanding the foregoing, even if a consumer has previously received a risk-based pricing notice in connection with a grant, extension, or other provision of credit, another risk-based pricing notice is required if the conditions set forth in § 640.3(d) have been met.

(b) *Multi-party transactions*—(1) *Initial creditor.* The motor vehicle dealer to whom a credit obligation is initially payable must provide the risk-based pricing notice described in § 640.3(a) or (c), or satisfy the requirements for and provide the notice required under one of the exceptions in § 640.5(d), (e), or (f), even if that motor vehicle dealer immediately assigns the credit agreement to a third party and is not the source of funding for the credit.

(2) *Purchasers or assignees.* A purchaser or assignee of a credit contract with a consumer is not subject to the requirements of this part and is not required to provide the risk-based pricing notice described in § 640.3(a) or (c), or satisfy the requirements for and provide the notice required under one of the exceptions in § 640.5(d), (e), or (f).

(3) *Examples.* (i) A consumer obtains credit to finance the purchase of an automobile. If the motor vehicle dealer is the person to whom the loan obligation is initially payable, such as where the motor vehicle dealer is the original creditor under a retail installment sales contract, the motor vehicle dealer must provide the risk-based pricing notice to the consumer (or satisfy the requirements for and provide the notice required under one of the exceptions noted above), even if the motor vehicle dealer immediately assigns the loan to a bank or finance company. The bank or finance company, which is an assignee, has no duty to provide a risk-based pricing notice to the consumer.

(ii) A consumer obtains credit to finance the purchase of an automobile. If a bank or finance company is the person to whom the loan obligation is initially payable, the bank or finance company must provide the risk-based pricing notice to the consumer (or satisfy the requirements for and provide the notice required under one of the exceptions noted above) based on the terms offered by that bank or finance company only. The motor vehicle dealer has no duty to provide a risk-based pricing notice to the consumer. However, the bank or finance company may comply with this rule if the motor vehicle dealer has agreed to provide notices to consumers before consummation pursuant to an arrangement with the bank or finance company, as permitted under § 640.4(c).

(c) *Multiple consumers*—(1) *Risk-based pricing notices.* In a transaction involving two or more consumers who are granted, extended, or otherwise provided credit, a motor vehicle dealer must provide a notice to each consumer to satisfy the requirements of § 640.3(a) or (c). Whether the consumers have the same address or not, the motor vehicle dealer must provide a separate notice to each consumer if a notice includes a credit score(s). Each separate notice that includes a credit score(s) must contain only the credit score(s) of the consumer to whom the notice is provided, and not the credit score(s) of the other consumer. If the consumers have the same address, and the notice does not include a credit score(s), a motor vehicle dealer may satisfy the requirements by providing a single notice addressed to both consumers.

(2) *Credit score disclosure notices.* In a transaction involving two or more consumers who are granted, extended, or otherwise provided credit, a motor vehicle dealer must provide a separate notice to each consumer to satisfy the exceptions in § 640.5(d), (e), or (f). Whether the consumers have the same address or not, the motor vehicle dealer must provide a separate notice to each consumer. Each separate notice must contain only the credit score(s) of the consumer to whom the notice is provided, and not the credit score(s) of the other consumer.

(3) *Examples.* (i) Two consumers jointly apply for credit with a creditor. The creditor obtains credit scores on both consumers. Based in part on the credit scores, the creditor grants credit to the consumers on material terms that are materially less favorable than the most favorable terms available to other consumers from the creditor. The creditor provides risk-based pricing notices to satisfy its obligations under this subpart. The creditor must provide a separate risk-based pricing notice to each consumer whether the consumers have the same address or not. Each risk-based pricing notice must contain only the credit score(s) of the consumer to whom the notice is provided.

(ii) Two consumers jointly apply for credit with a creditor. The two consumers reside at the same address. The creditor obtains credit scores on each of the two consumer applicants. The creditor grants credit to the consumers. The creditor provides credit score disclosure notices to satisfy its obligations under this part. Even though the two consumers reside at the same address, the creditor must provide a separate credit score disclosure notice to each of the consumers. Each notice must contain only the credit score of the consumer to whom the notice is provided.

PART 698—MODEL FORMS AND DISCLOSURES

■ 2. The authority citation for part 698 continues to read as follows:

Authority: 12 U.S.C. 5519; 15 U.S.C. 1681m(h); 15 U.S.C. 1681s–3; Sec. 214(b), Pub. L. 108–159.

■ 3. Revise appendix A to part 698 to read as follows:

Appendix A to Part 698—Model Forms for Risk-Based Pricing and Credit Score Disclosure Exception Notices

1. This appendix contains four model forms for risk-based pricing notices and three model forms for use in connection with the credit score disclosure exceptions. Each of the model forms is designated for use in a particular set of circumstances as indicated by the title of that model form.

2. Model form A–1 is for use in complying with the general risk-based pricing notice requirements in § 640.3 if a credit score is not used in setting the material terms of credit. Model form A–2 is for risk-based pricing notices given in connection with account review if a credit score is not used in increasing the annual percentage rate. Model form A–3 is for use in connection with the credit score disclosure exception for loans secured by residential real property. Model form A–4 is for use in connection with the credit score disclosure exception for loans not secured by residential real property. Model form A–5 is for use in connection with the credit score disclosure exception when no credit score is available for a consumer. Model form A–6 is for use in complying with the general risk-based pricing notice requirements in § 640.3 if a credit score is used in setting the material terms of credit. Model form A–7 is for risk-based pricing notices given in connection with account review if a credit score is used in increasing the annual percentage rate. All forms contained in this appendix are models; their use is optional.

3. A person may change the forms by rearranging the format or by making technical modifications to the language of the forms, in each case without modifying the substance of the disclosures. Any such rearrangement or modification of the language of the model forms may not be so extensive as to materially affect the substance, clarity, comprehensibility, or meaningful sequence of the forms. Persons making revisions with that effect will lose the benefit of the safe harbor for appropriate use of the model forms in this appendix. A person is not required to conduct consumer testing when rearranging the format of the model forms.

a. Acceptable changes include, for example:

i. Corrections or updates to telephone numbers, mailing addresses, or website addresses that may change over time.

ii. The addition of graphics or icons, such as the person's corporate logo.

iii. Alteration of the shading or color contained in the model forms.

iv. Use of a different form of graphical presentation to depict the distribution of credit scores.

v. Substitution of the words ''credit'' and ''creditor'' or ''finance'' and ''finance company'' for the terms ''loan'' and ''lender.''

vi. Including pre-printed lists of the sources of consumer reports or consumer reporting agencies in a ''check-the-box'' format.

vii. Including the name of the consumer, transaction identification numbers, a date, and other information that will assist in identifying the transaction to which the form pertains.

viii. Including the name of an agent, such as an motor vehicle dealer or other party, when providing the ''Name of the Entity Providing the Notice.''

b. Unacceptable changes include, for example:

i. Providing model forms on register receipts or interspersed with other disclosures.

ii. Eliminating empty lines and extra spaces between sentences within the same section.

4. Optional language in model forms A–6 and A–7 may be used to direct the consumer to the entity (which may be a consumer reporting agency or the creditor itself, for a proprietary score that meets the definition of a credit score) that provided the credit score for any questions about the credit score, along with the entity's contact information. Creditors may use or not use the additional language without losing the safe harbor, since the language is optional.

A–1 Model form for risk-based pricing notice.

A–2 Model form for account review risk-based pricing notice.

A–3 Model form for credit score disclosure exception for loans secured by one to four units of residential real property.

A–4 Model form for credit score disclosure exception for loans not secured by residential real property.

A–5 Model form for credit score disclosure exception for loans where credit score is not available.

A–6 Model form for risk-based pricing notice with credit score information.

A–7 Model form for account review risk-based pricing notice with credit score information.

BILLING CODE 6750–01–P

A-1. Model form for risk-based pricing notice

[Name of Entity Providing the Notice]

Your Credit Report[s] and the Price You Pay for Credit

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We used information from your credit report[s] to set the terms of the credit we are offering you, such as the [Annual Percentage Rate/down payment]. The terms offered to you may be less favorable than the terms offered to consumers who have better credit histories.
What if there are mistakes in your credit report[s]?	You have the right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)],** which [is/are] the [consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]:** *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[Insert address]** *On the web:* Visit **[insert web site address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under federal law, visit the Consumer Financial Protection Bureau's website at www.consumerfinance.gov/learnmore, or the Federal Trade Commission's website at www.ftc.gov/creditnotice.

A-2. Model form for account review risk-based pricing notice

[Name of Entity Providing the Notice]

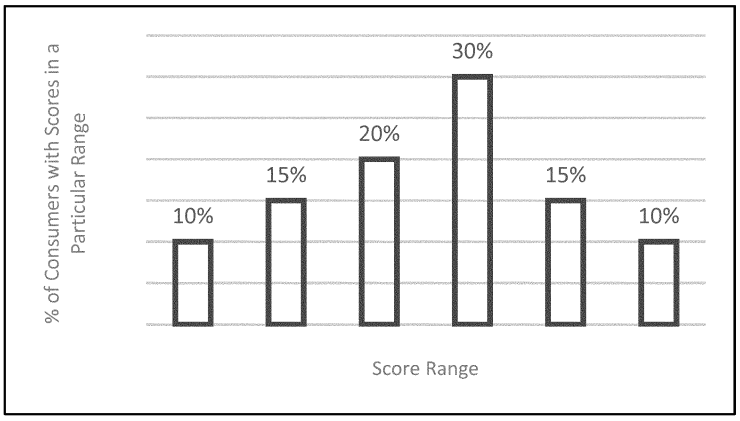
Your Credit Report[s] and the Pricing of Your Account

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We have used information from your credit report[s] to review the terms of your account with us. Based on our review of your credit report[s], we have increased the annual percentage rate on your account.
What if there are mistakes in your credit report[s]?	You have the right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)],** which [is/are] the [consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]:** *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[Insert address]** *On the web:* Visit **[insert web site address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under federal law, visit the Consumer Financial Protection Bureau's website at www.consumerfinance.gov/learnmore, or the Federal Trade Commission's website at www.ftc.gov/creditnotice.

A-3. Model form for credit score disclosure exception for loans secured by one to four units of residential real property

[Name of Entity Providing the Notice]
Your Credit Score and the Price You Pay for Credit

Your Credit Score	
Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**

Understanding Your Credit Score	
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. Your credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. Your credit score can change, depending on how your credit history changes.
How we use your credit score	Your credit score can affect whether you can get a loan and how much you will have to pay for that loan.
The range of scores	Scores can range from a low of **[Insert bottom number in range]** to a high of **[Insert top number in range].** Generally, the higher your score, the more likely you are to be offered better credit terms.
How your score compares to the scores of other consumers	 **[or]** [Your credit score ranks higher than [X] percent of U.S. consumers.]

Understanding Your Credit Score (continued)	
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert fifth factor, if applicable]**

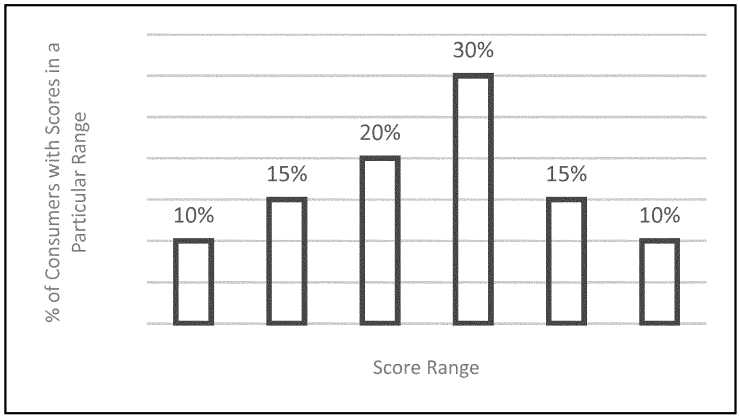
Checking Your Credit Report	
What if there are mistakes in your credit report?	You have a right to dispute any inaccurate informaiton in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.
How can you obtain a copy of your credit report?	Under federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report — *By telephone:* Call toll-free: 1-877-322-8228 *On the web:* Visit www.annualcreditreport.com *By mail:* Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's web site at http://www.ftc.gov/bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281
How can you get more information?	For more information about credit reports and your rights under federal law, visit the Consumer Financial Protection Bureau's website at www.consumerfinance.gov/learnmore, or the Federal Trade Commission's website at www.ftc.gov/creditnotice.

A-4. Model form for credit score disclosure exception for loans not secured by residential real property

[Name of Entity Providing the Notice]

Your Credit Score and the Price You Pay for Credit

Your Credit Score	
Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**

Understanding Your Credit Score	
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. Your credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. Your credit score can change, depending on how your credit history changes.
How we use your credit score	Your credit score can affect whether you can get a loan and how much you will have to pay for that loan.
The range of scores	Scores can range from a low of **[Insert bottom number in range]** to a high of **[Insert top number in range].** Generally, the higher your score, the more likely you are to be offered better credit terms.
How your score compares to the scores of other consumers	 **[or]** [Your credit score ranks higher than [X] percent of U.S. consumers.]

Checking Your Credit Report	
What if there are mistakes in your credit report?	You have a right to dispute any inaccurate informaiton in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.
How can you obtain a copy of your credit report?	Under federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report — *By telephone:* Call toll-free: 1-877-322-8228 *On the web:* Visit www.annualcreditreport.com *By mail:* Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's web site at http://www.ftc.gov/bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281
How can you get more information?	For more information about credit reports and your rights under federal law, visit the Consumer Financial Protection Bureau's website at www.consumerfinance.gov/learnmore, or the Federal Trade Commission's website at www.ftc.gov/creditnotice.

A-5. Model form for credit score disclosure for loans where credit score is not available

[Name of Entity Providing the Notice]

Credit Scores and the Price You Pay for Credit

Your Credit Score	
Your credit score	Your credit score is not available from **[Insert name of CRA]**, which is a consumer reporting agency, because they may not have enough information about your credit history to calculate a score.
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. Your credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors. Your credit score can change, depending on how your credit history changes.
Why credit scores are important	Credit scores are important because consumers who have higher credit scores generally will get more favorable credit terms. Not having a credit score can affect whether you can get a loan and how much you will have to pay for that loan.
Checking Your Credit Report	
What if there are mistakes in your credit report?	You have a right to dispute any inaccurate informaiton in your credit report. If you find mistakes on your credit report, contact the consumer reporting agency. It is a good idea to check your credit report to make sure the information it contains is accurate.
How can you obtain a copy of your credit report?	Under federal law, you have the right to obtain a free copy of your credit report from each of the nationwide consumer reporting agencies once a year. To order your free annual credit report — *By telephone:* Call toll-free: 1-877-322-8228 *On the web:* Visit www.annualcreditreport.com *By mail:* Mail your completed Annual Credit Report Request Form (which you can obtain from the Federal Trade Commission's web site at http://www.ftc.gov/bcp/conline/include/requestformfinal.pdf) to: Annual Credit Report Request Service P.O. Box 105281 Atlanta, GA 30348-5281
How can you get more information?	For more information about credit reports and your rights under federal law, visit the Consumer Financial Protection Bureau's website at www.consumerfinance.gov/learnmore, or the Federal Trade Commission's website at www.ftc.gov/creditnotice.

A-6. Model form for risk-based pricing notice with credit score information

[Name of Entity Providing the Notice]

Your Credit Report[s] and the Price You Pay for Credit

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We used information from your credit report[s] to set the terms of the credit we are offering you, such as the [Annual Percentage Rate/down payment]. The terms offered to you may be less favorable than the terms offered to consumers who have better credit histories.
What if there are mistakes in your credit report[s]?	You have the right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)],** which [is/are] the [consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]:** *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[Insert address]** *On the web:* Visit **[insert web site address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under federal law, visit the Consumer Financial Protection Bureau's website at www.consumerfinance.gov/learnmore, or the Federal Trade Commission's website at www.ftc.gov/creditnotice.

Your Credit Score and Understanding Your Credit Score

Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. We used your credit score to set the terms of the credit we are offering you. Your credit score can change, depending on how your credit history changes.
The range of scores	Scores range from a low of **[Insert bottom number in the range]** to a high of **[Insert top number of the range].**
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert number of enquiries as a key factor, if applicable]**
[How can you get more information about your credit score?]	[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at: Address:_____ _____ [Toll-free] Telephone number: _____]

A-7. Model form for account review risk-based pricing notice with credit score information

[Name of Entity Providing the Notice]

Your Credit Report[s] and the Pricing of Your Account

What is a credit report?	A credit report is a record of your credit history. It includes information about whether you pay your bills on time and how much you owe to creditors.
How did we use your credit report[s]?	We used information from your credit report[s] to review the terms of your account with us. Based on our review of your credit report[s], we have increased the annual percentage rate on your account.
What if there are mistakes in your credit report[s]?	You have the right to dispute any inaccurate information in your credit report[s]. If you find mistakes on your credit report[s], contact **[insert name of CRA(s)],** which [is/are] [a consumer reporting agency/consumer reporting agencies] from which we obtained your credit report[s]. It is a good idea to check your credit report[s] to make sure the information [it contains/they contain] is accurate.
How can you obtain a copy of your credit report[s]?	Under federal law, you have the right to obtain a copy of your credit report[s] without charge for 60 days after you receive this notice. To obtain your free report[s], contact **[insert name of CRA(s)]:** *By telephone:* Call toll-free: 1-877-xxx-xxxx *By mail:* Mail your written request to: **[Insert address]** *On the web:* Visit **[insert web site address]**
How can you get more information about credit reports?	For more information about credit reports and your rights under federal law, visit the Consumer Financial Protection Bureau's website at www.consumerfinance.gov/learnmore, or the Federal Trade Commission's website at www.ftc.gov/creditnotice.

Your Credit Score and Understanding Your Credit Score

Your credit score	**[Insert credit score]** Source: **[Insert source]** Date: **[Insert date score was created]**
What you should know about credit scores	Your credit score is a number that reflects the information in your credit report. We used your credit score to set the terms of the credit we are offering you. Your credit score can change, depending on how your credit history changes.
The range of scores	Scores range from a low of **[Insert bottom number in the range]** to a high of **[Insert top number of the range].**
Key factors that adversely affected your credit score	**[Insert first factor]** **[Insert second factor]** **[Insert third factor]** **[Insert fourth factor]** **[Insert number of enquiries as a key factor, if applicable]**
[How can you get more information about your credit score?]	[If you have any questions regarding your credit score, you should contact [entity that provided the credit score] at: Address: _____ _____ [Toll-free] Telephone number: _____]

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2021–19908 Filed 9–16–21; 8:45 am]

BILLING CODE 6750–01–C

FEDERAL TRADE COMMISSION

16 CFR Part 641

RIN 3084–AB63

Duties of Users of Consumer Reports Regarding Address Discrepancies

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 Duties of Users of Consumer Reports Regarding Address Discrepancies Rule (''Address Discrepancy 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 Address Discrepancy 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. The FACT Act added section 605(h) to the Fair Credit Reporting Act (''FCRA''), which requires a national consumer reporting agency (''CRA'') that receives a request for a consumer report that contains an address substantially different from the address on file for the consumer to notify the requester of the existence of the discrepancy.[1] Section 605(h) also required federal banking agencies, the National Credit Union Administration and the Commission to issue regulations providing guidance regarding reasonable policies and procedures that a user of a consumer report should employ when the user receives a notice of address discrepancy.[2] In 2007, the agencies issued the Address Discrepancy Rule to satisfy this requirement.[3]

The Address Discrepancy Rule requires a user of consumer reports to develop and implement reasonable policies and procedures designed to enable the user to form a reasonable belief that a consumer report relates to the consumer about whom it has requested a consumer report, when the user receives a notice of address discrepancy.[4] Users must also develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed as accurate to the CRA from whom it received the notice when the user (1) can confirm the consumer report relates to the consumer about whom the user requested the

[1] Section 605 is codified at 15 U.S.C. 1681c.

[2] 15 U.S.C. 1681c(h)(2).

[3] 16 CFR part 641.

[4] 16 CFR 641.1(c).

report, (2) establishes a continuing relationship with the consumer, and (3) regularly furnishes information about the consumer to the CRA.[5]

B. Dodd-Frank Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') was signed into law in 2010.[6] 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.[7] Accordingly, in 2012, the Commission rescinded several of its FCRA rules, which had been replaced by rules issued by the CFPB.[8] The FTC retains 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[9] predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both (''motor vehicle dealers'').[10] The rules for which the FTC retains rulemaking authority include the Address Discrepancy Rule, which now applies only to consumer report users that are motor vehicle dealers.[11] Consumer report users that are not motor vehicle dealers are covered by the CFPB's rule.[12]

II. Regulatory Review of the Address Discrepancy Rule

On September 15, 2020, the Commission solicited comments on the Address Discrepancy Rule as part of its periodic review of its rules and guides.[13] The Commission sought information about the costs and benefits of the Rule, and its regulatory and economic impact. In addition, the Commission proposed to narrow the scope of the Address Discrepancy Rule to motor vehicle dealers excluded from Consumer Financial Protection Bureau jurisdiction as described in the Dodd-Frank Act.[14] The Commission received one comment.[15]

III. Overview of Final Rule

The Commission adopted the Address Discrepancy Rule at a time when it had rulemaking authority for a broader group of consumer report users. While the Dodd-Frank Act did not change the Commission's enforcement authority for the Address Discrepancy Rule, it did narrow the Commission's rulemaking authority with respect to the Rule. It now covers only motor vehicle dealers.[16] The amendments in the Dodd-Frank Act necessitate a technical revision to the Address Discrepancy Rule to ensure the regulation is consistent with the text of the amended FCRA. Accordingly, the Final Rule amends the Address Discrepancy Rule to properly reflect the Rule's scope.

The sole commenter on the Rule stated the Address Discrepancy Rule allowed him to discover a case of identity theft involving the misuse of his Social Security number, and argued the Rule should not be changed.[17] The Commission agrees no changes other than those required by the Dodd-Frank Act are necessary and the Final Rule makes no further amendments to the existing Rule. Although the Commission is revising the scope of the Rule so it is consistent with the applicable statute, the protections provided to consumers will not change: Users of consumer reports have the same obligations with respect to address discrepancies under the CFPB's corresponding rule as under the FTC's rule.

IV. Paperwork Reduction Act

The Address Discrepancy 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 December 31, 2021 (OMB Control No. 3084–0137).

The Final Rule amends 16 CFR part 641. The amendments do not modify or add to information collection requirements previously approved by OMB. The amendments do not make any substantive changes to the Rule, other than to narrow the scope to motor vehicle dealers. The existing clearance already reflects that change in 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 the proposed rule will not have a significant impact on a substantial number of small entities.[18] The Commission published an Initial Regulatory Flexibility Analysis in order to inquire into the impact of the proposed Rule on small entities.[19] 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 the rule will not have a significant economic impact on a substantial number of small businesses.

Although the Commission certifies under the RFA the 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 that 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 change the scope of the Rule. With this action, the Commission makes the current scope of the Rule clearer.

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[5] 16 CFR 641.1(d).

[6] Public Law 111–203 (2010).

[7] 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).

[8] 77 FR 22200 (April 13, 2012).

[9] 12 U.S.C. 5519.

[10] 77 FR 22200 (April 13, 2012).

[11] *Id.*

[12] 12 CFR 1022.82.

[13] 85 FR 57172 (September 15, 2020).

[14] 12 U.S.C. 5519.

[15] The comment can be found at *www.regulations.gov/document/FTC-2020-0065-0001.*

[16] 15 U.S.C. 1681s(e)(1); 12 U.S.C. 5519.

[17] John Kahn (comment 1), *www.regulations.gov/document/FTC-2020-0065-0001.*

[18] 5 U.S.C. 603–605.

[19] 85 FR 57172, 57174 (Sept. 15, 2020).

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.[20] 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 do not impose any 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).

Final Rule Language

List of Subjects in 16 CFR Part 641

Consumer protection, Credit, Trade Practices

For the reasons stated above, the Federal Trade Commission amends part 641 of title 16 of the Code of Federal Regulations as follows:

■ 1. Revise the authority section for part 641 to read as follows:

Authority: Pub. L. 108–159, sec. 315; 15 U.S.C. 1681c(h); 12 U.S.C. 5519(d).

■ 2. In § 641.1, revise paragraph (a) to read as follows:

§ 641.1 Duties of users of consumer reports regarding address discrepancies.

(a) *Scope.* This section applies to users of consumer reports that are motor vehicle dealers excluded from Consumer Financial Protection Bureau jurisdiction as described in 12 U.S.C. 5519.

* * * * *

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2021–19918 Filed 9–16–21; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 660

RIN 3084–AB63

Duties of Furnishers of Information to Consumer Reporting Agencies 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 the Duties of Furnishers of Information to Consumer Reporting Agencies Rule (''Furnisher Rule'') to correspond to changes made to the Fair Credit Reporting Act (''FCRA'') by the Dodd-Frank Act.

DATES: The 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 Furnisher 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 312 of the FACT Act amended section 623 [1] of the FCRA by requiring the FTC, with other agencies, to issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies (''CRAs'') and to prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines. Section 312 also required the Commission and the other agencies to issue regulations identifying the circumstances under which a furnisher must reinvestigate direct consumer disputes concerning the accuracy of information provided by the furnisher to a CRA. On July 1, 2009, the Commission issued the Furnisher Rule and the accompanying guidelines that took effect on July 1, 2010.[2]

The Rule requires furnishers to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that they furnish to a CRA.[3] The Rule also requires that furnishers respond to direct disputes from consumers.[4]

B. Dodd-Frank Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') was signed into law in 2010.[5] 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.[6] Accordingly, in 2012, the Commission rescinded several of its FCRA rules, which had been replaced by rules issued by the CFPB.[7] The FTC retained rulemaking authority for other rules to the extent the rules apply to motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act [8] predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both (''motor vehicle dealers'').[9] The retained rules include the Furnisher Rule, which now applies only to motor vehicle dealers.[10] Furnishers originally covered

[20] Table of Small Bus. Size Standards Matched to North American Indus. Classification System Codes, 13 CFR 121.201 (available at: *https://www.sba.gov/document/support--table-size-standards*), updated Aug. 19, 2019. For example, used car dealers are classified as NAICS 441120 and new car dealers as NAICS 441110. Under those standards, the SBA would classify as small businesses independent used car dealers having annual receipts of less than $27 million and new car dealers having fewer than 200 employees each.

[1] 15 U.S.C. 1681s–2.

[2] 74 FR 31484.

[3] 16 CFR 660.3.

[4] 16 CFR 660.4.

[5] Public Law 111–203 (2010).

[6] 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).

[7] 77 FR 22200 (April 13, 2012); 12 U.S.C. 5519.

[8] 15 U.S.C. 5519.

[9] 77 FR 22200.

[10] *Id.*

by the Furnisher Rule that are not motor vehicle dealers are covered by the CFPB's rule.[11] The Commission continues to have authority to enforce the CFPB's rule and has brought several actions alleging violations of the rule.[12]

II. Regulatory Review of the Furnisher Rule

On September 30, 2020, the Commission solicited comments on the Furnisher Rule as part of its periodic review of its rules and guides. The Commission sought information about the costs and benefits of the Rule, and its regulatory and economic impact. In addition, the Commission proposed amending sections 660.1 and 660.2 to narrow the scope of the Furnisher Rule to motor vehicle dealers excluded from CFPB jurisdiction as described in the Dodd-Frank Act. The Commission received one comment stating that the Furnisher Rule assists millions of consumers to discover inaccuracies in their consumer reports and emphasizing the need for continued enforcement of the Rule.[13] The Commission agrees with this commenter.

III. Overview of Final Rule

The Commission adopted the Furnisher Rule at a time when it had rulemaking authority for a broader group of consumer report users. While the Dodd-Frank Act did not change the Commission's enforcement authority for the Furnisher Rule, it did narrow the Commission's rulemaking authority with respect to the Rule. It now covers only motor vehicle dealers.[14] The amendments in the Dodd-Frank Act necessitate technical revisions to the Furnisher Rule to ensure the regulation is consistent with the text of the amended FCRA. Accordingly, the Commission amends the Furnisher Rule to properly reflect the Rule's scope.

The amendment to section 660.1 narrows the scope of the Furnisher Rule to ''motor vehicle dealers,'' as defined in amended section 660.2.

The amendment to section 660.2 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.[15] The amendments also change the definition of ''identity theft'' by replacing the Rule's reference to 16 CFR 603.2(a), a provision of an FTC rule that has since been rescinded,[16] with a reference to 12 CFR 1022.3(h), the equivalent provision in the CFPB's rule. The amendments make no other substantive changes to the Rule.

IV. Paperwork Reduction Act

The Furnisher 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 July 31, 2022 (OMB Control No. 3084–0144). Under the existing clearance, the FTC has attributed to itself the estimated burden regarding all motor vehicle dealers and then shares equally the remaining estimated PRA burden with the CFPB for other persons for which both agencies have enforcement authority regarding the Furnisher Rule.

The Final Rule amends 16 CFR part 660. The amendments do not modify or add to information collection requirements previously approved by OMB. The amendments narrow the scope to motor vehicle dealers. The Rule's OMB clearance already reflects that change. 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.[17] The Commission published an Initial Regulatory Flexibility Analysis in order to inquire into the impact of the proposed Rule on small entities.[18] 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 Furnisher Rule will not have a significant economic impact on a substantial number of small businesses.

Although the Commission certifies under the RFA 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 that 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.

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[11] 12 CFR 1022.40–43.

[12] *See, e.g., FTC* v. *Midwest Recovery Systems, LLC,* Case No. 4:20–cv–01674 (E.D. Mo. November 25, 2020); *United States* v. *Credit Protection Association, LP,* Case No. 3:16–cv–01255–D (N.D. Tex. May 9, 2016); *United States* v. *Consumer Portfolio Services, Inc.,* Case No. SACV14–00819 (C.D. Cal. May 28, 2014); *United States* v. *Telecheck Services, Inc.,* Case No. 1:14–cv–00062 (D.D.C. January 16, 2014).

[13] East Bay Community Law Center (Comment 3), available at *www.regulations.gov/comment/FTC-2020-0072-0003.* The Commission received two comments concerning consumer reporting agency activities unrelated to the Furnisher Rule. The comments are available at *www.regulations.gov/document/FTC-2020-0068-0001/comment.*

[14] 15 U.S.C. 1681s(e)(1); 12 U.S.C. 5519.

[15] 12 U.S.C. 5519.

[16] 77 FR 22200 (April 13, 2012).

[17] 5 U.S.C. 603–605.

[18] 85 FR 61659, 61661 (Sept. 30, 2020).

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 660

Consumer protection, Credit, Trade practices.

For the reasons stated above, the Federal Trade Commission amends part 660 of title 16 of the Code of Federal Regulations as follows:

■ 1. Revise the authority section for part 660 to read as follows:

Authority: Pub. L. 108–159, sec. 311; 15 U.S.C. 1681s–2; 12 U.S.C. 5519(d).

■ 2. Revise § 660.1 to read as follows:

§ 660.1 Scope.

This part applies to furnishers of information to consumer reporting agencies that are motor vehicle dealers as defined by § 660.2 of this part (referred to as ''furnishers'').

■ 3. In § 660.2, revise paragraph (d) and add paragraph (f) to read as follows:

§ 660.2 Definitions.

* * * * *

(d) *Identity theft* has the same meaning as in 12 CFR 1022.3(h).

* * * * *

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

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2021–19910 Filed 9–16–21; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1301

[Docket No. DEA–749]

RIN 1117–AB70

Addition of the United States Space Force as a Registration Waiver and Registration Fee Exempt Military Entity

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule amends existing regulations to include the United States Space Force as a registration waiver and registration fee exempt military entity.

DATES: This rule is effective September 17, 2021.

FOR FURTHER INFORMATION CONTACT: Scott A. Brinks, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3261.

SUPPLEMENTARY INFORMATION:

Technical Amendment

Current Drug Enforcement Administration (DEA) regulations exempt registration fees and waive certain registration requirements for listed military entities: The U.S. Army, Navy, Marine Corps, Air Force, and Coast Guard. Any hospital or other institution operated by one of these entities,[1] and any individual practitioners required to obtain a registration in order to carry out their duties as officials of an agency of the United States (including the U.S. Army, Navy, Marine, Corps, Air Force, and Coast Guard), is exempt from payment of an application fee for registration or reregistration.[2] In addition, current DEA regulations waive the requirement of registration for officials of the U.S. Army, Navy, Marine Corps, Air Force, or Coast Guard who are authorized to prescribe, dispense, or administer, but not to procure or purchase, controlled substances in the course of their duties.[3] Finally, current DEA regulations waive the requirement of registration for any official or agency of the U.S. Army, Navy, Marine Corps, Air Force, or Coast Guard authorized to import or export controlled substances in the course of their duties.[4]

[1] 21 CFR 1301.21(a)(1).

[2] 21 CFR 1301.21(a)(2).

[3] 21 CFR 1301.23(a).

[4] 21 CFR 1301.23(b).

The United States Space Force (USSF)—formerly known as the Air Force Space Command (AFSC)—was established as an independent military branch on December 20, 2019,[5] by the United States Space Force Act. This rule therefore revises 21 CFR 1301.21 and 1301.23 to include USSF in the list of military entities exempt from paying DEA registration fees. Because the AFSC was fee exempt under existing DEA regulations as part of the Air Force, the DEA is issuing this final rule to provide clarity by adding ''Space Force'' to 21 CFR 1301.21 (''Exemption from fees'') and 21 CFR 1301.23 (''Exemption of certain military and other personnel'').

Regulatory Analyses

Administrative Procedure Act

The Administrative Procedure Act (APA) (5 U.S.C. 553) does not require notice and the opportunity for public comment where the agency for good cause finds that notice and public comment are unnecessary, impracticable, or contrary to the public interest under 5 U.S.C. 553(b)(B). This rule contains a technical amendment; it imposes no new or substantive requirement on the public or DEA registrants. As such, DEA has determined that notice and the opportunity for public comment on this rule are unnecessary. Because this is not a substantive rule, and as DEA finds good cause under 5 U.S.C. 553(d)(3) for the above reason, this final rule will take effect upon date of publication in the **Federal Register**.

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

This final rule was developed in accordance with the principles of Executive Orders (E.O.) 12866 and 13563. E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). E.O. 13563 is supplemental to, and reaffirms, the principles, structures, and definitions governing regulatory review as established in E.O. 12866. The Office of Information and Regulatory Affairs has deemed this type of technical amendment not significant under E.O. 12866.

[5] 10 U.S.C. 9081.

Executive Order 12988, Civil Justice Reform

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burdens.

Executive Order 13132, Federalism

This final rule does not have federalism implications warranting the application of Executive Order 13132. The final rule does not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This final rule does not have tribal implications warranting the application of Executive Order 13175. This rule does not have substantial direct effects 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.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA. As noted in the above discussion regarding applicability of the APA, the DEA was not required to publish a general notice of proposed rulemaking prior to this final rule. Consequently, the RFA does not apply.

Unfunded Mandates Reform Act of 1995

The DEA has determined and certified pursuant to the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501 *et seq.,* that this action will not result in any federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. Therefore, neither a Small Government Agency Plan nor any other action is required under the provisions of UMRA.

Paperwork Reduction Act

This action does not involve a collection of information requirement under the Paperwork Reduction Act, 44 U.S.C. 3501–3521. This action does not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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 Office of Management and Budget (OMB) control number.

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. However, pursuant to the CRA, the DEA is submitting a copy of this final rule to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

For the reasons stated in the preamble, DEA amends 21 CFR part 1301 as follows:

PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 831, 871(b), 875, 877, 886a, 951, 952, 956, 957, 958, 965 unless otherwise noted.

■ 2. In § 1301.21, revise paragraphs (a)(1) and (2) to read as follows:

§ 1301.21 Exemption from fees.

(a) * * *

(1) Any hospital or other institution which is operated by an agency of the United States (including the U.S. Army, Navy, Marine Corps, Air Force, Space Force, and Coast Guard), of any State, or any political subdivision or agency thereof.

(2) Any individual practitioner who is required to obtain an individual registration in order to carry out his or her duties as an official of an agency of the United States (including the U.S. Army, Navy, Marine Corps, Air Force, Space Force, and Coast Guard), of any State, or any political subdivision or agency thereof.

* * * * *

■ 3. In § 1301.23, revise paragraphs (a) and (b) to read as follows:

§ 1301.23 Exemption of certain military and other personnel.

(a) The requirement of registration is waived for any official of the U.S. Army, Navy, Marine Corps, Air Force, Space Force, Coast Guard, Public Health Service, or Bureau of Prisons who is authorized to prescribe, dispense, or administer, but not to procure or purchase, controlled substances in the course of his/her official duties. Such officials shall follow procedures set forth in part 1306 of this chapter regarding prescriptions, but shall state the branch of service or agency (*e.g.,* ''U.S. Army'' or ''Public Health Service'') and the service identification number of the issuing official in lieu of the registration number required on prescription forms. The service identification number for a Public Health Service employee is his/her Social Security identification number.

(b) The requirement of registration is waived for any official or agency of the U.S. Army, Navy, Marine Corps, Air Force, Space Force, Coast Guard, or Public Health Service who or which is authorized to import or export controlled substances in the course of his/her official duties.

* * * * *

Anne Milgram,

Administrator.

[FR Doc. 2021–19984 Filed 9–16–21; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2021–0648]

Special Local Regulation; Marine Events Within the Eleventh Coast Guard District—San Diego Bayfair

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the San Diego Bayfair special local regulation on the waters of Mission Bay, California from September 17, 2021, through September 19, 2021. This special local regulation is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area unless authorized by the Captain of the Port, or his designated representative.

DATES: The regulation in 33 CFR 100.1101, Table 1 to § 100.1101, Item No. 9, will be enforced from 6 a.m. until 6 p.m., each day from September 17, 2021, through September 19, 2021.

FOR FURTHER INFORMATION CONTACT: If you have questions about this

notification of enforcement, call or email Lieutenant Commander John Santorum, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7656, email *D11MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation in 33 CFR 100.1101, Table 1 to § 100.1101, Item No. 9, for the San Diego Bayfair race regulated area daily from 6 a.m. to 6 p.m., on September 17, 2021 through September 19, 2021. This action is being taken to provide for the safety of life on navigable waterways during this 3-day event. Our regulation for marine events within the Eleventh Coast Guard District, § 100.1101, Table 1 to § 100.1101, Item No. 9, specifies the location of the regulated area for the San Diego Bayfair which encompasses the waters of Mission Bay to include Fiesta Bay, the east side of Vacation Isle, and Crown Point shores. Under the provisions of § 100.1101, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area unless authorized by the Captain of the Port, or his designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and Marine Safety Information Broadcasting.

If the Captain of the Port Sector San Diego or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Safety Marine Information Broadcast or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

Dated: September 13, 2021.

T.J. Barelli,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2021–20097 Filed 9–16–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2021–0024]

Special Local Regulation; Marine Events Within the Eleventh Coast Guard District—Swim for Special Operations Forces

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulation on the waters of San Diego Bay, San Diego, California during the Honor Foundation Swim for Special Operations Forces (SOF) on September 18, 2021. This special local regulation is necessary to provide for the safety of the participants, crew, sponsor vessels of the swim event, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from entering into, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port, or his designated representative.

DATES: The regulation in 33 CFR 100.1101, Table 1 to § 100.1101, Item No. 16, will be enforced from 8 a.m. until 12:30 p.m., on September 18, 2021.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Commander John Santorum, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7656, email *D11MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation in 33 CFR 100.1101, Table 1 to § 100.1101, Item No. 16, from 8 a.m. through 12:30 p.m. on September 18, 2021 for the Honor Foundation Swim for SOF in San Diego, CA. This action is being taken to provide for the safety of life on navigable waterways during the swim event. Our regulation for recurring marine events in the San Diego Captain of the Port Zone, § 100.1101, Table 1 to § 100.1101, Item No. 16, specifies the location of the regulated area for the Honor Foundation Swim for SOF, CA, which encompasses portions of San Diego Bay. Under the provisions of § 100.1101, persons and vessels are prohibited from entering into, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port, or his designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: September 13, 2021.

T.J. Barelli,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2021–20098 Filed 9–16–21; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 751

[EPA–HQ–OPPT–2021–0202; FRL–6015.5–03–OCSPP]

RIN 2070–AK89

Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Phenol, Isopropylated Phosphate (3:1); Compliance Date Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending the regulations applicable to phenol, isopropylated phosphate (3:1) (PIP (3:1)) promulgated under the Toxic Substances Control Act (TSCA). Specifically, EPA is extending the compliance date applicable to the processing and distribution in commerce of certain PIP (3:1)-containing articles, and the PIP (3:1) used to make those articles from March 8, 2021, to March 8, 2022. For such articles, EPA is also extending the compliance date for the recordkeeping requirements applicable to manufacturers, processors, and distributors from March 8, 2021, to March 8, 2022. The articles covered by this amendment include a wide range of key consumer and commercial goods such as cellular telephones, laptop computers, and other electronic and electrical devices and industrial and commercial equipment used in various sectors including transportation, life sciences, and semiconductor production.

DATES: This final rule is effective on September 17, 2021.

ADDRESSES: The docket for this action, identified by docket identification (ID)

number EPA–HQ–OPPT–2021–0202, is available at *https://www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Cindy Wheeler, Existing Chemicals Risk Management Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0484; email address: *TSCA-PBT-rules@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. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture (including import), process, distribute in commerce, or use phenol, isopropylated phosphate (3:1) (PIP (3:1)), or PIP (3:1)-containing articles, especially plastic articles that are components of electronics or electrical articles. 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:

- Petroleum Refineries (NAICS Code 324110);
- All Other Basic Organic Chemical Manufacturing (NAICS Code 325199);
- Plastics Material and Resin Manufacturing (NAICS Code 325211);
- All Other Miscellaneous Chemical Product and Preparation Manufacturing (NAICS Code 325998);
- Machinery Manufacturing (NAICS Code 333);
- Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing (NAICS Code 333415);
- Other Communications Equipment Manufacturing (NAICS Code 334290);
- Computer and Electronic Product Manufacturing (NAICS Code 334);
- Small Electrical Appliance Manufacturing (NAICS Code 335210);
- Major Household Appliance Manufacturing (NAICS Code 335220);
- Motor and Generator Manufacturing (NAICS Code 335312);
- Switchgear and Switchboard Apparatus Manufacturing (NAICS Code 335313);
- Relay and Industrial Control Manufacturing (NAICS Code 335314);
- Other Communication and Energy Wire Manufacturing (NAICS Code 335929);
- Current-carrying Wiring Device Manufacturing (NAICS Code 335931);
- Transportation Equipment Manufacturing (NAICS Code 336);
- Musical Instrument Manufacturing (NAICS Code 339992);
- All Other Miscellaneous Manufacturing (NAICS Code 339999);
- Other Chemical and Allied Products Merchant Wholesalers (NAICS Code 424690);
- Motor Vehicle and Parts Dealers (NAICS Code 441);
- All Other Home Furnishings Stores (NAICS Code 442299);
- Electronics and Appliance Stores (NAICS Code 443);
- Building Material and Garden Equipment and Supplies Dealers (NAICS Code 444);
- Research and Development in the Physical, Engineering, and Life Sciences (NAICS Code 541710).

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

1. *Toxic Substances Control Act (TSCA).* TSCA section 6(h), 15 U.S.C. 2605(h), directs EPA to take expedited action on certain persistent, bioaccumulative, and toxic (PBT) chemical substances. For chemical substances that meet the statutory criteria, EPA is directed to issue final rules that address the risks of injury to health or the environment that the Administrator determines are present and to reduce exposure to the substance(s) to the extent practicable. In response to this directive, EPA identified PIP (3:1) as meeting the TSCA section 6(h) criteria and issued a final rule for PIP (3:1) on January 6, 2021 (Ref. 1). The January 2021 final rule prohibits the processing and distribution of PIP (3:1), PIP (3:1)-containing products, and PIP (3:1)-containing articles, with specified exclusions; prohibits or restricts the release of PIP (3:1) to water during manufacturing, processing, distribution, and commercial use; requires persons manufacturing, processing, and distributing in commerce PIP (3:1) and products containing PIP (3:1) to notify their customers of these prohibitions and restrictions and to keep records. Several different compliance dates were established, the first of which was March 8, 2021, after which processing and distribution of PIP (3:1), PIP (3:1)-containing products, and PIP (3:1)-containing articles were prohibited unless an alternative compliance date or exclusion was otherwise provided. With the obligation to promulgate these rules, the Agency also has the authority to amend them if circumstances change, including in relation to the receipt of new information and in relation to compliance deadlines established under TSCA section 6(d). It is well settled that EPA has inherent authority to reconsider, revise, or repeal past decisions to the extent permitted by law so long as the Agency provides a reasoned explanation. See *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009). Here, as explained further in Unit I.D., based on information submitted by regulated entities since the publication of the final rule in January 2021, the Agency has determined that a limited extension to certain PIP (3:1) revised compliance dates is appropriate and necessary to address comments that the original compliance dates were not practicable and did not provide adequate transition time because they would have caused extensive harm to the economy and public due to unavailability of critical goods and equipment. This limited extension to the referenced compliance dates is intended to allow EPA additional time to consider how best to approach the concerns raised in comments seeking longer term extensions.

2. *Administrative Procedure Act (APA).* APA section 553(d), 5 U.S.C. 553(d), provides that the publication of a substantive rule must occur no later than 30 days before its effective date, with certain exceptions. The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' See *Omnipoint Corp.* v. *Fed. Commc'n Comm'n,* 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). Of relevance here, APA section 553(d)(1), 5 U.S.C. 553(d)(1), provides that final rules shall not become effective until 30 days after publication in the **Federal Register** ''except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction.'' However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust

because the effect is not adverse. See *Indep. U.S. Tanker Owners Comm.* v. *Skinner,* 884 F.2d 587 (D.C. Cir. 1989) (upholding immediate effective date for a final rule intended to avoid disruption in domestic trade by lifting a ban on vessels participating in domestic shipping), *mandate modified on other grounds,* 901 F.2d 1116 (D.C. Cir. 1990). EPA has determined that this rule relieves a restriction by providing additional time for regulated entities to comply with the applicable requirements. Accordingly, EPA is making this rule effective immediately upon publication.

C. What action is the Agency taking?

EPA is amending the regulations at 40 CFR 751.407(a)(2) to provide for a phased-in prohibition for the processing and distributing in commerce of PIP (3:1) for use in certain articles and for the processing and distributing in commerce of certain PIP (3:1)-containing articles. Articles covered by this phased-in prohibition include any article not otherwise covered by a different compliance deadline or exclusion described in 40 CFR 751.407(a)(2)(ii) or (b). The compliance date for the prohibitions on processing and distributing in commerce of PIP (3:1) for use in articles, and the processing and distributing in commerce of PIP (3:1)-containing articles in the final rule published on January 6, 2021 (Ref. 1), as well as for the recordkeeping requirements, was 60 days after the date of publication, or March 8, 2021. With this amendment, EPA is extending the compliance date for the processing and distributing in commerce of PIP (3:1) for use in articles, and the processing and distributing in commerce of PIP (3:1)-containing articles, to March 8, 2022. With respect to articles covered by this final rule, EPA is also extending the compliance date from March 8, 2021, to March 8, 2022, for the recordkeeping requirements applicable to manufacturers, processors, and distributors of PIP (3:1)-containing articles. In addition to this final rulemaking, EPA is planning to issue a separate notice of proposed rulemaking (NPRM) in the near future to request comment on a further compliance date extension for certain PIP (3:1)-containing articles, the PIP (3:1) used to make those articles, and the recordkeeping associated with PIP (3:1)-containing articles.

D. Why is the Agency taking this action?

EPA is issuing this final rule to address the hardships inadvertently created by the January 2021 final rule on PIP (3:1) (Ref. 1) due to uses and supply chain challenges that were not communicated to EPA until after the rule was published. Shortly after the final rule was published in January 2021, many stakeholders, including, for example, the electronics and electrical manufacturing sector and their customers, raised significant concerns about their ability to meet the March 8, 2021, compliance date for PIP (3:1)-containing articles (Ref. 2). These stakeholders requested an extension of the compliance date in order to clear the existing articles through the supply chain, find and certify an alternative chemical, and produce or import new articles that do not contain PIP (3:1). In the **Federal Register** of March 16, 2021 (Ref. 3), EPA requested additional comment on this specific issue (Ref. 3), as well as on other aspects of all of the TSCA section 6(h) final rules in general (Refs. 4, 5, 6, 7). According to the comments received in response to the March comments solicitation, a wide range of key consumer and commercial goods are affected by the prohibitions in the PIP (3:1) final rule such as cellular telephones, laptop computers, and other electronic devices and industrial and commercial equipment used in various sectors including transportation, life sciences, and semiconductor production (Ref. 8). This action will ensure that the supply chains for these important articles continue uninterrupted in the near term while allowing EPA to take additional comment on a separate proposal for a longer-term compliance date extension.

E. What are the incremental economic impacts?

EPA evaluated the potential incremental economic impacts and determined that these changes reduce the existing burden of this action. The quantified effect of this compliance date extension reflects the difference between the incremental cost and benefits of the final rule as it was originally promulgated and the incremental cost and benefits of this final rule with the compliance date in place. Quantified costs were estimated for substitution and recordkeeping by moving the associated costs, assuming they will be incurred as the compliance date extension expires. In summary, extending the compliance date by one year for PIP (3:1)-containing articles would result in an estimated annualized cost savings of $0.9 million (from a cost of $23.6 million for the original rule to $22.7 million) at a 3 percent discount rate or $1.3 million (from $22.8 million for the original rule to $21.5 million for this final rule) at a 7 percent discount rate over a 25-year time horizon. Other qualitative costs savings may include allowance of more time for manufacturers and retailers to sell articles prior to the prohibition deadline rather than being forced to dispose of them, thereby avoiding loss of revenue from those products. Secondly, any reformulation costs (such as research and development, laboratory testing, and re-labeling) could be reduced since companies will have more time to gather information regarding the steps involved in the reformulation process. The level of these cost savings is dependent on complexity of achieving needed efficacy, length of time needed for testing and quality control, and the current status of development of alternatives, which may vary greatly by sector and end use product. Lastly, the compliance date extension may provide additional time for information gathering through the supply chain to alleviate the necessity for chemical testing of certain articles. Although the benefits of the final rule were not quantified, the extension would also postpone decreases in potential releases and exposures to PIP (3:1). Due to discounting, in a manner similar to costs, this postponement would lead to lower potential benefits. On balance, this rule is appropriate in light of the disruptive consequences of implementing the prohibition without the compliance extension. The economic consequences (such as loss of supply) could be severe, given the apparent ubiquity of the chemical in commerce. Thus, EPA has determined that the cost savings and avoidance of disruption to industry outweigh the delayed realization of benefits that may accrue from reduced exposure.

II. Background

A. History of the TSCA Rulemaking on PIP (3:1)

TSCA section 6(h) requires EPA to take expedited regulatory action under TSCA section 6(a) for certain PBT chemicals identified in the 2014 Update to the TSCA Work Plan for Chemical Assessments (Ref. 9). More specifically, under TSCA section 6(h)(1)(A), the subject chemical substances are those that:

- EPA has a reasonable basis to conclude are toxic and that with respect to persistence and bioaccumulation score high for one and either high or moderate for the other, pursuant to the 2012 TSCA Work Plan Chemicals: Methods Document (Ref. 10) or a successor scoring system;
- Are not a metal or a metal compound; and

• Are chemical substances for which EPA has not completed a TSCA Work Plan Problem Formulation, initiated a review under TSCA section 5, or entered into a consent agreement under TSCA section 4, prior to June 22, 2016, the date that the Frank R. Lautenberg Chemical Safety for the 21st Century Act became law.

In addition, in order for a chemical substance to be subject to expedited action, TSCA section 6(h)(1)(B) states that EPA must find that exposure to the chemical substance under the conditions of use is likely to the general population or to a potentially exposed or susceptible subpopulation identified by the Administrator, or to the environment on the basis of an exposure and use assessment conducted by EPA. For chemical substances subject to TSCA section 6(h), EPA was directed to issue a proposed rule by June 22, 2019, and a final rule no later than 18 months after issuance of the proposal. The statute further provides that the Administrator shall not be required to conduct risk evaluations on chemical substances that are subject to TSCA section 6(h)(1).

1. *June 2019 proposed rule for PBT chemicals under TSCA section 6(h).* EPA issued a proposed rule for PIP (3:1) and four other chemical substances in June 2019 (Ref. 11). EPA proposed to determine that PIP (3:1) met the TSCA section 6(h)(1)(A) criteria for expedited action. In addition, based on an exposure and use assessment for PIP (3:1) (Ref. 12) conducted as directed by TSCA section 6(h)(1)(B) and which was subject to peer review and public comment, EPA also proposed to find that exposure to PIP (3:1) is likely.

During the development of the 2019 proposed rule (Ref. 11), EPA conducted extensive outreach to understand the uses of the five PBTs. Outreach included a public webinar, a Small Business Roundtable hosted by the Small Business Administration Office of Advocacy, and meetings with more than 90 stakeholders. Based on this outreach as well as EPA's practicability analysis for various prohibitions and restrictions, EPA proposed extended compliance dates for some uses of PIP (3:1) and exclusions for others.

The public comment period on the proposal was open for a total of 90 days, closing on October 28, 2019. EPA received a total of 48 comments, with three commenters sending multiple submissions with attached files, for a total of 58 submissions on the proposal for all five of the PBT chemicals. This includes the previous request for a comment period extension (EPA–HQ–OPPT–2019–0080–0526). Two commenters submitted confidential business information (CBI) or copyrighted documents with information regarding economic analysis and market trends. Of the comment submissions, 30 of the approximately 50 comments addressed EPA's proposed regulation of PIP (3:1). Copies of all the non-CBI documents, or redacted versions without CBI, are available via *https://www.regulations.gov* in docket ID number EPA–HQ–OPPT–2019–0080.

2. *January 2021 final rule for PIP (3:1) under TSCA section 6(h).* The final rule for PIP (3:1) was published in the **Federal Register** on January 6, 2021 (Ref. 1). EPA determined in the final rule that PIP (3:1) met the TSCA section 6(h)(1)(A) criteria for expedited action. In addition, EPA determined, in accordance with TSCA section 6(h)(1)(B), that exposure to PIP (3:1) was likely under the conditions of use to the general population, to a potentially exposed or susceptible subpopulation, or the environment. The PIP (3:1) final rule prohibits processing and distribution in commerce of PIP (3:1), and products or articles containing the chemical substance, for all uses, except for the following different compliance dates or exclusions:

• Use in photographic printing articles after January 1, 2022;
• Use in aviation hydraulic fluid in hydraulic systems and use in specialty hydraulic fluids for military applications;
• Use in lubricants and greases;
• Use in new and replacement parts for the aerospace and automotive industries;
• Use as an intermediate in the manufacture of cyanoacrylate glue;
• Use in specialized engine air filters for locomotive and marine applications;
• Use in sealants and adhesives after January 6, 2025; and
• Recycling of plastic that contained PIP (3:1) before the plastic was recycled, and the articles and products made from such recycled plastic, so long as no new PIP (3:1) is added during the recycling or production process.

In addition, the January 2021 final rule requires manufacturers, processors, and distributors of PIP (3:1) and products containing PIP (3:1) to notify their customers of these restrictions. Finally, the rule prohibits releases to water from the remaining manufacturing, processing, and distribution in commerce activities, and requires commercial users of PIP (3:1) and PIP (3:1)-containing products to follow existing regulations and best practices to prevent releases to water during use.

Also defined at 40 CFR 751.403 for the purposes of 40 CFR part 751, subpart E, which includes the January 2021 PIP (3:1) final rule, are the terms ''article'' and ''product'' (Ref. 1). ''Article'' is defined as a manufactured item: (1) Which is formed to a specific shape or design during manufacture, (2) Which has end use function(s) dependent in whole or in part upon its shape or design during end use, and (3) Which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article, and that result from a chemical reaction that occurs upon end use of other chemical substances, mixtures, or articles; except that fluids and particles are not considered articles regardless of shape or design. For example, laptop computers are articles, as are the internal components such as chips, wiring, and cooling fans. ''Product'' is defined as the chemical substance, a mixture containing the chemical substance, or any object that contains the chemical substance or mixture containing the chemical substance that is not an article. For example, hydraulic fluids and motor oils are products.

The January 2021 final rule differed from the proposal in several ways as a result of the information provided during the public comment period. The exclusions that were based on information received during the public comment period are the exclusion for the use of PIP (3:1) in new and replacement parts for aerospace vehicles, as an intermediate in a closed system to produce cyanoacrylate adhesives, in specialized engine air filters for locomotive and marine applications, plastics recycling, and finished products or articles made of recycled plastic. The final rule also features delayed compliance dates for the use of PIP (3:1) in photographic printing articles and adhesives and sealants.

B. The March 16, 2021 Notification and Request for Comments

Shortly after the publication of the January 2021 final rule, a wide variety of stakeholders from various sectors, including the electronics and electrical manufacturing community and their customers, started raising concerns about the March 8, 2021, compliance date in the final rule for the prohibition on the processing and distributing in commerce of PIP (3:1) for use in articles and PIP (3:1)-containing articles (Ref. 2). These stakeholders contended that they needed significantly more time in order to identify whether and where PIP (3:1)

might be present in articles in their supply chains, find and certify alternative chemicals, and produce or import new articles that do not contain PIP (3:1). Despite EPA's extensive outreach, most stakeholders contacting EPA after the rule was finalized did not comment on the proposal or otherwise engage with the agency on the PIP (3:1) rulemaking, and do not appear to have previously surveyed their supply chains to determine if PIP (3:1) was being used. Several indicated that they did not understand that articles can be regulated under TSCA, and that, because PIP (3:1) is not regulated by other authorities, including those of other countries or under international agreements, there was a lack of awareness relative to its presence in the supply chain. Absent engagement and timely or specific input from these stakeholders that could be used as a basis for granting further extensions or exemptions from the proposed prohibition, in the final rule EPA believed that PIP (3:1) was not widely present in articles outside the aerospace and automotive sectors. While some commenters on the 2019 proposed rule indicated that PIP (3:1) may be present in articles, their comments were very general and did not identify specific uses or specific concerns with the March 8, 2021, compliance date.

Based on the concerns raised by stakeholders shortly after publication of the final rule, EPA issued a No Action Assurance (NAA) on March 8, 2021 (Ref. 13), in an effort to ensure that the supply chains of these important articles were not interrupted while the agency collected the information needed to best inform subsequent regulatory efforts. The NAA only described how the agency will exercise its enforcement discretion; the NAA did not change the March 8, 2021, compliance date or the continued harm created by that compliance date. Moreover, the NAA did not prevent citizen suits for violations of the January 2021 rule. The NAA indicated that EPA would exercise its enforcement discretion to not pursue enforcement regarding the prohibition on processing and distribution of PIP (3:1) for use in articles, and PIP (3:1)-containing articles, for the following violations:

Shortly after the NAA was issued, EPA published in the ''Proposed Rules'' section of the **Federal Register** a notification and request for specific comments (Ref. 3) to address the concerns that had been raised by stakeholders regarding PIP (3:1) in articles. While the March 2021 notification and request for comment did not include a specific alternative compliance date for PIP (3:1)-containing articles and the PIP (3:1) for use in those articles, the document did describe in particular the issues raised by industry stakeholders regarding the March 8, 2021, compliance date, including the types of articles affected, such as those used in a wide variety of electronics, ranging from cellular telephones, to robotics used to manufacture semiconductors, to equipment used to move COVID–19 vaccines and keep them at the appropriate temperature. The document further outlined the complexity of international supply chains described by industry stakeholders and how, according to those stakeholders, that complexity creates challenges for identifying and finding alternatives to PIP (3:1) in complex supply chains. Finally, EPA asked commenters to specifically describe:

- The articles that would need an alternative compliance date;
- The basis for such an alternative compliance date, taking into consideration the reasons supporting alternative compliance dates in the final rule already issued, such as the January 1, 2022, date for photographic printing articles and the January 6, 2025, date for adhesives and sealants, with supporting documentation; and
- The additional time needed for specific articles to clear channels of trade.

EPA received a total of 122 comments in response to the March 2021 notification and request for comment (Ref. 3); 78 of these were from industry stakeholders, most of whom were concerned about compliance for PIP (3:1)-containing articles (Ref. 8). Stakeholders concerned about PIP (3:1)-containing articles reiterated that they needed much more time, in some cases up to 15 years (Ref. 14), in order to identify where PIP (3:1) might be present in their supply chains, find and certify alternatives, and produce or import new articles that do not contain PIP (3:1).

1. *Comments on articles that contain, or potentially contain, PIP (3:1).* During the public comment period, several industry commenters identified a wide range of articles that may contain PIP (3:1). PIP (3:1) is used as a flame retardant and plasticizer in plastic articles such as polyvinyl chloride (PVC) wire covers and casings. Other articles which have been identified or are being investigated for the presence of PIP (3:1) include PVC tubes, harnesses, cables, covers, sleeves, and casings, which include AC power cords and USB cables for consumer and commercial articles such as laptops, televisions, and gaming consoles. According to the electrical manufacturing industry a representative sample of articles made possible by the qualities unique to PIP (3:1) include medical devices, capacitors, inverters, generators, transformers, semiconductor wafers, computers, and electrical appliances (Ref. 15). Manufacturers of construction, agriculture, forestry, mining, and utility equipment have identified PIP (3:1) in fire prevention systems, engine emission control systems, electronics, wiring harnesses, hydraulic hoses, switches, fabrics, PVC articles, resin in fiberglass articles, paints, elastomers, foam, resistors, splitters, articles that are alarm components, automatic tire inflation equipment, and wire sleeving (Ref. 16). According to another commenter, in construction, agriculture, forestry, mining, and utility equipment, PIP (3:1) is frequently found in wire harnesses, starters, water pumps, motor gears, pre-wired motors, ground cables, and compressors (Ref. 17). The semiconductor manufacturing industry has identified the use of PIP (3:1) in semiconductor-related manufacturing equipment (as well as microelectromechanical-related, solar-related, and LED-related manufacturing equipment), as well as semiconductor fabrication facilities' support equipment and infrastructure, such as laboratory, substrate and device (*e.g.,* die) preparation, and assembly and test operations, including advanced packaging (Ref. 14) as well as articles that are internal components of high-tech robotics and manufacturing equipment. Additionally, the chemical has been identified in articles that are components in scanning electron microscopes utilized in research, national laboratories, and academia (Ref. 18).

EPA generally agrees with these commenters that PIP (3:1) is used in a variety of articles, especially in plastic articles that are components of electronics or electrical articles. Further, at the time the January 2021 final rule was issued, EPA did not understand the extent to which PIP (3:1) is used in articles beyond those articles specifically addressed in that final rule, which are photographic printing articles, new and replacement parts for aerospace and motor vehicles, specialized locomotive and marine engine air filters, and recycled plastics. EPA notes that this final rule does not affect the compliance dates established for these specific articles in the January 2021 final rule. EPA outlined its understanding on the use of PIP (3:1) in

articles in responding to public comments on the January 2021 final rule, ''[t]here is little evidence to suggest that PIP (3:1) is present in articles which may be available to consumers, and outside of activities excluded from the prohibition, little evidence to suggest it is necessary or present in commercial and industrial articles as well'' (Ref. 26).

2. *Comments on the challenges associated with determining whether articles contain PIP (3:1).* Commenters described in detail the challenges associated with determining whether a particular article contains PIP (3:1), especially for complex goods that contain thousands of individual parts. For example, commenters from the consumer electronics sector noted that articles that are components for their complex goods are sourced on a worldwide market and a manufacturer may have upwards of 5,000 suppliers for potentially 100,000 or more component articles across all product lines (Ref. 19). These commenters note that manufacturers do not receive a list of every chemical within each part or component article that ultimately goes into a finished electronic article because ingredient lists are highly proprietary and confidential. Rather, companies provide functionality, performance, safety and quality specifications of a part or component article to their supply chain, including specifications regarding chemical restrictions. According to these commenters, suppliers are provided lists of restricted chemicals on at least an annual basis, or more frequently if there is a triggering event, such as a new government restriction. Suppliers are notified of the lead time for the restriction of the chemical and any testing that may be required, and the suppliers communicate that information upstream to their own suppliers.

According to these commenters (Ref. 19), the task of determining whether PIP (3:1) is used in a component article in a finished electronic good is further complicated by the many article manufacturers being unable to identify or confirm the PIP (3:1) content of articles, such as supplied parts, components or commercial and consumer goods, without laboratory testing. Laboratory testing can run up to $5,000 per product and take up to one (1) month. As a result, companies must rely on material declarations by suppliers as a more practicable and reliable approach to determine the usage of PIP (3:1) within an article.

Other commenters echo these concerns. Comments from the heating, ventilation, air conditioning, and refrigeration industry note that manufacturers are currently working their way through tens of thousands of stock-keeping units (SKUs), each having hundreds of associated component articles and spare parts (Ref. 20). They contend that their suppliers have generally not been forthright about the presence of PIP (3:1) in their component articles and parts, even after receiving notification that the use of PIP (3:1) in component articles must be disclosed. According to these commenters, some suppliers continue to claim that they will not disclose the chemical makeup of component articles as the composition is confidential intellectual property. In response, some of the larger manufacturers have started testing component articles to compensate for this lack of transparency, but testing is time-consuming and costly and most smaller businesses do not have the resources to undertake testing.

The semiconductor industry and the testing and measurement industry noted that their industries differ from the consumer electronics industry and the automotive industry, in that their industries are high-mix, low-volume industries, meaning that manufacturer portfolios are typically comprised of a large number of unique goods with relatively low unit sales (Refs. 14, 21). Their equipment is primarily custom built to order and sold directly to professional and industrial customers by the manufacturers (Ref. 21). The semiconductor industry typically places only 600 to 6,000 units of semiconductor manufacturing and related equipment into U.S. commerce each year and it is not uncommon for small groups of model units to be customized to an end user's particular needs (Ref. 14). According to this commenter, this is in stark contrast to most consumer goods, in which individual similar model units are placed into U.S. commerce in much greater number, and to the automotive and aerospace sectors, in which goods are manufactured in lower quantities but which are quite similar from model unit to model unit (Ref. 14). The semiconductor industry further noted that their sector's ability to obtain material composition data from across their supply chain is limited due to three factors: (1) The length and complexity of the supply chain; (2) the preponderance of suppliers located outside of the U.S.; and (3) the tens of thousands of parts incorporated into each article eventually manufactured or distributed in commerce within the U.S.

EPA generally recognizes the challenges described by these commenters in determining whether and where PIP (3:1) is present in articles in their supply chains and how long it may take to clear those PIP (3:1)-containing articles through the channels of trade. As to comments relating to testing, as most commenters note, there are a number of alternative steps to testing that an importer or a domestic manufacturer can take to ensure that an article does not contain PIP (3:1). The customer can include a specification in their purchase contracts with suppliers that articles be made without PIP (3:1). The customer can also request that their suppliers provide them with a written statement or certification that the purchased or supplied goods are made without PIP (3:1). Of course, testing is always an option, but EPA recognizes that this may be a more expensive option.

3. *Comments on compliance date considerations for PIP (3:1)-containing articles.* Nearly all of the industry commenters responding to EPA's March 2021 notification and request for comment (Ref. 3) stated that they needed several years to phase PIP (3:1) out of their articles. Many contended that they needed much longer, up to fifteen years (Refs. 14, 18) assuming that it is even feasible to do so. Commenters identified a number of steps that would be needed in order to complete a phase-out of PIP (3:1) in articles. These steps include: (1) Identifying where PIP (3:1) is present; (2) identifying and testing substitutes; (3) testing and re-certifying (as needed) the replacement article; and (4) distributing the replacement article throughout the supply chain. Many commenters provided detailed timelines for the steps needed to replace PIP (3:1).

For example, the consumer electronics industry noted that, while companies had begun to survey their suppliers as soon as the final rule was published, because of the large number of parts and suppliers involved for most manufacturers, they anticipated that completing the survey would take between six and twelve months (Ref. 19). They also noted that, because PIP (3:1) is not regulated in other international markets, there is a general lack of awareness regarding the chemical throughout the supply chain and the industry expects the surveys to take closer to twelve months than six.

According to the consumer electronics industry commenters, once PIP (3:1) is identified in a particular part by a particular supplier, the supplier must identify and investigate alternatives to PIP (3:1) that can meet regulatory requirements and manufacturer requirements with respect to functionality, performance, safety and quality (Ref. 19). Given that PIP (3:1) is typically used in electronic component

articles to meet safety standards related to flammability, a component article that includes a PIP (3:1) alternative will have to be certified to the applicable safety standard (Ref. 19). Common safety standards that apply to consumer electronics, according to the commenters, include Underwriters Laboratory UL94, entitled ''Tests for Flammability of Plastic Material for Part in Devices and Applications,'' and UL498, entitled ''Attachment Plugs and Receptacles.'' The timeline for retesting and recertification of replacement component articles is determined by the certification organization, and consumer electronics manufacturers estimate that testing could take anywhere from 3 to 24 months (Ref. 19).

The commenters detail the next steps in replacing a PIP (3:1)-containing component article (Ref. 19). Once the manufacturer of the finished consumer electronics good receives the replacement component article, the manufacturer will conduct its own internal quality assessments. The manufacturer will conduct an initial assessment on whether the component article works, has the correct performance characteristics, and maintains brand integrity. Once these basic parameters have been evaluated, the manufacturer will assemble the component article into a consumer electronics good and conduct an overall quality assessment, which may include smoke and ignition testing, current leakage testing, and temperature testing, among other things (Ref. 19). At that point, the reworked good is sent for third-party certification. If the substituted component article is considered critical by the certification body, full retesting and recertification of the good may be necessary. Industry commenters anticipate that full retesting and recertification will be required, given the use of PIP (3:1) from a fire safety perspective and the fact that the types of component articles where PIP (3:1) is used play critical roles in the goods. Manufacturers anticipate that this recertification step will take anywhere from six to thirty months (Ref. 19). Finally, according to these commenters, a minimum of one year is needed to move the newly-remanufactured goods throughout the supply chain. This commenter further contended that a chemical phase out in response to a restriction in the European Union under the Restriction on Hazardous Substances (RoHS) 2, a product-level compliance program for electrical and electronic equipment, is typically effective four years from the date of notice by the European Union (Ref. 19).

Other industries provided similarly detailed descriptions of the length of time needed to replace PIP (3:1)-containing component articles. The heavy equipment sector stated that their design cycles are typically seven years from start to finish, and that this would likely be the amount of time needed to identify whether and to what extent PIP (3:1) exists in the supply chain, confirm the function of PIP (3:1) for the end-use application, identify alternatives, re-design for the alternative rather than PIP (3:1), test the replacement component article for safety, regulatory, and quality requirements, and re-introduce the good into the market (Ref. 16). According to this commenter, the testing requirements often take the longest time to complete during a redesign because heavy-duty industrial equipment operates in demanding and severe operating conditions over a long product life cycle. Such equipment is reportedly subject to various fire safety and flammability regulatory requirements set by the National Highway Traffic Safety Administration (Flammability Test for Motor Vehicle Interiors, 49 CFR 571.302), the Occupational Safety and Health Administration (Fire Protection and Prevention, 29 CFR 1926.24 and 1926.151), the Mine Safety and Health Administration (various fire prevention provisions, including 30 CFR part 35 and 30 CFR 75.1100, 75.1911, and 77.1100), and the Federal Railroad Administration (49 CFR parts 216, 223, 229, 231, 232, 238). Additionally, according to this commenter, engine emission sensors designed for off-road equipment to comply with the Clean Air Act currently rely on PIP (3:1) to survive the high-temperature environment in the engine compartment (Ref. 16).

A unique problem reported by this commenter and several others in the heavy equipment sector is that their supply chains often overlap with much larger industries, such as the automotive and aerospace sectors (Refs. 16, 17, 22, 23, and 24). A recent survey by one commenter found that 61% of the surveyed suppliers in the heavy equipment sector also provided parts and materials to the automotive industry (Ref. 16). According to this commenter, despite the significant overlap in suppliers, there are key differences in the product design lifecycles and volumes between the industries. Heavy-duty, industrial professional use equipment is decidedly lower volume with a higher diversity of goods than those found in the consumer automotive market. As the automotive sector is currently excluded from the January 2021 PIP (3:1) final rule, the current regulations allow suppliers to provide automotive parts that contain PIP (3:1) to their automotive manufacturers. With the higher variability of goods and lower volume nature of the heavy-duty, industrial equipment sector, commenters assert that the manufacturers of this non-automotive equipment will need to utilize custom made parts which, if available, could cost between two and ten times the normal price of the automotive parts that they would ordinarily use (Ref. 24).

In contrast to the industry commenters, who all stated that the March 8, 2021, compliance date for PIP (3:1)-containing articles was not practicable, a comment submitted by three environmental public interest groups in response to EPA's March 2021 notification and request for comment (Ref. 3) stated that industry had been given sufficient notice of EPA's intent to regulate PIP (3:1) in articles and did not believe that EPA should excuse their failure to comment in a timely manner (Ref. 25). This commenter further noted that any exclusions or extended compliance dates should be considered under the stringent criteria of TSCA section 6(g), which requires EPA to determine one of the following: (1) That the condition of use is a critical or essential use with no feasible safer alternatives; or (2) that compliance with a requirement would significantly disrupt the national economy, national security, or critical infrastructure; or (3) that the specific condition of use provides a substantial benefit to health, the environment, or public safety.

EPA generally agrees with the industry commenters on the steps required to phase PIP (3:1) out of articles in their supply chains. Industry must first determine where PIP (3:1) is present; identify alternatives to PIP (3:1), and then design, test, and recertify, as necessary, the new articles made without PIP (3:1). Those new articles must then be distributed throughout the supply chain. However, some commenters provided detailed estimates of the time needed to take these steps while others did not. For example, comments from the consumer technology sector gave estimates for completing each one of these steps, with the overall timeline ranging from 2.25 years to 6.5 years (Ref. 19). Estimated timelines provided by commenters in response to the March 2021 notification and request for comment (Ref. 3) ranged from 2.25 years to 15 years or more (Refs. 19, 14). Given the varying estimates, and the lack of detail

accompanying some of those estimates, EPA has determined that a relatively short compliance date extension until March 8, 2022, is necessary to avoid immediate and significant disruption in the supply chains for important articles, to provide the public with regulatory certainty in the near term, and to allow EPA additional time to further evaluate the need to again extend the compliance deadlines for PIP (3:1).

EPA disagrees with the commenter who contended that any compliance date extension should be evaluated under TSCA section 6(g). As noted in response to similar comments on the 2019 proposed rule, ''TSCA section 6(h)(4) directs EPA to issue regulations that reduce exposure to PBT chemicals 'to the extent practicable,' not to regulate beyond the point of practicability and then issue [section 6(g)] exemptions that would limit the scope of those regulations'' (Ref. 26, at p. 44). EPA views this compliance date extension as consistent with this standard, and as discussed in Unit III, with the requirements of TSCA section 6(d) to ensure that the compliance dates are ''as soon as practicable'' and provide a ''reasonable transition period,'' because this action is necessary to avoid immediate and significant disruption in the supply chains for important articles, such as cellular telephones and the HVACR equipment used to cool people, buildings, and to transport and store COVID–19 vaccines and keep them at the appropriate temperature, not as an excuse for a failure to comment earlier in this rulemaking process.

III. Provisions of This Final Rule

A. Establishing a Compliance Date Under TSCA Section 6(d)

TSCA section 6(d)(1)(A) directs EPA to specify a date on which the TSCA section 6(a) rule is to take effect that is ''as soon as practicable.'' TSCA section 6(d)(1)(B) requires EPA to specify mandatory compliance dates for each requirement of a rule promulgated under TSCA section 6(a), which must be as soon as practicable but no later than five years after promulgation except as provided in subsections (C) and (D) or in the case of a use exempted under TSCA section 6(g). TSCA section 6(d)(1)(C) states that EPA must specify mandatory compliance dates for the start of ban or phase-out requirements under a TSCA section 6(a) rule, which must be as soon as practicable but no later than five years after promulgation, except in the case of a use exempted under TSCA section 6(g); and subsection (D) requires EPA to specify mandatory compliance dates for full implementation of ban or phase-out requirements, which must be as soon as practicable. Additionally, TSCA section 6(d)(1)(E) directs EPA to provide for a reasonable transition period.

As noted in the preamble to the January 2021 final rule, the phrases ''as soon as practicable'' and ''reasonable transition period'' as used in TSCA section 6(d)(1) are undefined, and the legislative history on TSCA section 6(d) is limited. Given the ambiguity in the statute, for purposes of the final rule under TSCA section 6(h), EPA presumed a 60-day compliance date was ''as soon as practicable,'' unless there was support for a lengthier period of time on the basis of reasonably available information, such as information submitted in comments on the Exposure and Use Assessment or on the proposed rule, or in stakeholder dialogues. At the time, EPA believed that such a presumption would ensure that the compliance schedule is ''as soon as practicable,'' particularly in the context of the TSCA section 6(h) rules for chemicals identified as persistent, bioaccumulative and toxic, and given that the expedited timeframe for issuing a TSCA section 6(h) proposed rule did not allow time for collection and assessment of new information separate from the comment opportunities during the development of and in response to the proposed rule. EPA noted that this approach also allows for submission of information from the sources most likely to have the information that would impact an EPA determination on whether or how best to adjust the compliance deadline to ensure that the final compliance deadline chosen is both ''as soon as practicable'' and provides a ''reasonable transition period.''

As previously noted, EPA did not receive timely or specific input from certain stakeholders during any public comment periods prior to issuance of the 2019 proposed rule or in response to the proposed rule regarding the presence of PIP (3:1) in myriad articles. Absent this input, in the final rule EPA determined that PIP (3:1) was not widely present in articles outside the aerospace and automotive sectors and that the presumption that a 60-day compliance date was practicable was appropriate. The comments received in response to EPA's March 2021 notification and request for comment (Ref. 3), and the communications received before that document published in the **Federal Register**, presented new information demonstrating that a 60-day compliance date was not a reasonable transition period for the full implementation of a ban or phase-out for many industries.

B. Compliance Date Extension

From the comments received in response to EPA's March 2021 notification and request for comment (Ref. 3), as well the information provided during stakeholder meetings since the publication of the January 2021 final rule on PIP (3:1), it is clear to EPA that the compliance date for PIP (3:1) and PIP (3:1)-containing articles, but not PIP (3:1)-containing products, must be extended. While some commenters provided detailed descriptions of the affected articles and detailed timelines for the phasing out of PIP (3:1) from these articles, most did not provide the specificity that EPA was looking for in response to the March 2021 notification and request for comment (Ref. 3). In addition, many commenters stated that they were still in the early stages of identifying the affected articles (Ref. 19). Therefore, EPA has determined that a relatively short compliance date extension until March 8, 2022, is necessary to avoid immediate and significant disruption in the supply chains for important articles, to provide the public with regulatory certainty in the near term, and to allow EPA additional time to further evaluate the need to again extend the compliance deadlines for PIP (3:1).

In addition to this final rule, EPA is planning to issue a separate NPRM in the near future to provide an opportunity for stakeholders to submit comments on the need for an additional compliance date extension for certain PIP (3:1)-containing articles, and the PIP (3:1) used to make those articles, and to include in their comments specific information detailing the necessity of such an extension. EPA is seeking this additional comment because EPA does not yet have sufficient information on which to base a decision on the length of time that will ultimately be needed for the affected industry sectors to comply with the prohibitions in the January 2021 final rule. During this upcoming comment period, EPA expects that industry will be able to provide more detailed information on the number and type of articles affected by the January 2021 final rule, given the ongoing work on the identification process and the additional six months as of the date that the comment period will close.

IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other

information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Phenol, Isopropylated Phosphate (3:1) (PIP 3:1)); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Final Rule. **Federal Register** (86 FR 894, January 6, 2021) (FRL–10018–88).
2. Letter from the Consumer Technology Association (CTA) and the Information Technology Industry Council (ITI) to EPA on March 15, 2021. EPA–HQ–OPPT–2021–0202–0015.
3. EPA. Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Proposed Rule; Request for Comments. **Federal Register** (86 FR 14398, March 16, 2021) (FRL–10021–08).
4. EPA. 2,4,6-Tris(tert-butyl)phenol (2,4,6–TTBP); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Final Rule. **Federal Register** (86 FR 866, January 6, 2021) (FRL–10018–90).
5. EPA. Decabromodiphenyl Ether (DecaBDE); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Final Rule. **Federal Register** (86 FR 880, January 6, 2021) (FRL–10018–87).
6. EPA. Pentachlorothiophenol (PCTP); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Final Rule. **Federal Register** (86 FR 911, January 6, 2021) (FRL–10018–89).
7. EPA. Hexachlorobutadiene (HCBD); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Final Rule. **Federal Register** (86 FR 922, January 6, 2021) (FRL–10018–91).
8. Comments submitted to EPA. Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h). Docket ID EPA–HQ–OPPT–2021–0202–0001.
9. EPA. TSCA Work Plan for Chemical Assessments: 2014 Update. October 2014. *https://www.epa.gov/assessingandmanaging-chemicals-under-tsca/tscawork-plan-chemical-assessments-2014-update.*
10. EPA. TSCA Work Plan Chemicals: Methods Document. February 2012. *https://www.epa.gov/sites/production/files/2014-03/documents/work_plan_methods_document_web_final.pdf.*
11. EPA. Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h); Proposed Rule. **Federal Register** (84 FR 36728, July 29, 2019) (FRL–9995–76).
12. EPA. Exposure and Use Assessment of Five Persistent, Bioaccumulative, and Toxic Chemicals. December 2020.
13. EPA. No Action Assurance Regarding Prohibition of Processing and Distribution of Phenol Isopropylated Phosphate (3:1), PIP (3:1) for Use in Articles, and PIP (3:1)-containing Articles under 40 CFR 751.407(a)(1). March 8, 2021. *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/public-comment-period-pbt-rules-and-no-action-assurance.*
14. Comment submitted by SEMI and the Semiconductor Equipment Association of Japan (SEAJ) to EPA on May 17, 2021. EPA–HQ–OPPT–2021–0202–0121.
15. Comment submitted by National Electrical Manufacturers Association (NEMA) to EPA on May 17, 2021. EPA–HQ–OPPT–2021–0202–0117.
16. Comment submitted by the Association of Equipment Manufacturers (AEM) to EPA on May 13, 2021. EPA–HQ–OPPT–2021–0202–0053.
17. Comment submitted by CNH Industrial to EPA on May 14, 2021. EPA–HQ–OPPT–2021–0202–0065.
18. Comment submitted by Hitachi High-Tech America Inc. to EPA on May 17, 2021. EPA–HQ–OPPT–2021–0202–0093.
19. Comment submitted by the Consumer Technology Association (CTA) and the Information Technology Industry Council (ITI) to EPA on May 17, 2021. EPA–HQ–OPPT–2021–0202–0148.
20. Comment submitted by the Air-Conditioning, Heating and Refrigeration Institute (AHRI) to EPA on May 17, 2021. EPA–HQ–OPPT–2021–0202–0143.
21. Comment submitted by the Test & Measurement Coalition (T&M) to EPA on May 17, 2021. EPA–HQ–OPPT–2021–0202–0122.
22. Comment submitted by LBX Company, LLC to EPA on May 17, 2021. EPA–HQ–OPPT–2021–0202–0082.
23. Comment submitted by Clark Equipment Company to EPA on May 17, 2021. EPA–HQ–OPPT–2021–0202–0095.
24. Comment submitted by Outdoor Power Equipment Institute (OPEI) to EPA on May 17, 2021. EPA–HQ–OPPT–2021–0202–0125.
25. Comment submitted by Safer Chemicals Healthy Families (SCHF) et al. to EPA on May 17, 2021. EPA–HQ–OPPT–2021–0202–0096.
26. EPA. Regulation of Persistent, Bioaccumulative, and Toxic Chemicals under TSCA Section 6(h); Response to Public Comments. December 2020. EPA–HQ–OPPT–2019–0080–0647.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www2.epa.gov/lawsregulations/laws-and-executive-orders.*

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

This action is a significant regulatory action under Executive Order 12866 (58 FR 51735, October 4, 1993) and was submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). Any changes made in response to OMB review have been reflected in the docket for this action.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection activities or burden subject to OMB review and approval under the PRA, 44 U.S.C. 3501 *et seq.* Burden is defined in 5 CFR 1320.3(b). OMB has previously approved the information collection activities contained in the existing regulations and associated burden under OMB Control No. 2070–0213 (EPA ICR No. 2599.02). 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.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This final rule extends the compliance date for a prohibition on the processing and distributing in commerce of PIP (3:1) for use in certain articles and the processing and distributing in commerce of certain PIP (3:1)-containing articles, along with the associated recordkeeping requirements, from March 8, 2021, to March 8, 2022. EPA has therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no

enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It 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.

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

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This final rule will not impose substantial direct compliance costs on Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

This action is not a ''covered regulatory action'' under Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not an economically significant regulatory action as defined by Executive Order 12866.

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

This is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not otherwise been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards. As such, 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

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). As discussed in Unit II., this action is necessary to avoid widespread disruptions in the supply chains for a wide variety of essential goods and would not otherwise materially alter the final rule as published.

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 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 in 40 CFR Part 751

Environmental protection, Chemicals, Export notification, Hazardous substances, Import certification, Reporting and recordkeeping.

Dated: September 3, 2021.

Michael S. Regan,

Administrator.

Therefore, for the reasons set forth in the preamble, 40 CFR part 751 is amended as follows:

PART 751—REGULATION OF CERTAIN CHEMICAL SUBSTANCES AND MIXTURES UNDER SECTION 6 OF THE TOXIC SUBSTANCES CONTROL ACT

■ 1. The authority citation for part 751 continues to read as follows:

Authority: 15 U.S.C. 2605, 15 U.S.C. 2625(l)(4).

■ 2. Amend § 751.407 by adding paragraph (a)(2)(iii) and revising paragraph (d)(4) to read as follows:

§ 751.407 PIP (3:1).

(a) * * *

(2) * * *

(iii) After March 8, 2022, except as provided in paragraphs (a)(2)(ii) and (b) of this section, all persons are prohibited from all processing and distribution in commerce of PIP (3:1) for use in articles and PIP (3:1)-containing articles.

* * * * *

(d) * * *

(4) The recordkeeping requirements in paragraph (d) of this section do not apply to the activities described in paragraphs (b)(1)(vi) and (vii) of this section. The recordkeeping requirements in paragraph (d) of this section also do not apply to PIP (3:1)-containing articles until March 8, 2022.

* * * * *

[FR Doc. 2021–19516 Filed 9–16–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Parts 77, 78, 79, 80, 201, and 206

[Docket ID FEMA–2019–0011]

RIN 1660–AA96

FEMA's Hazard Mitigation Assistance and Mitigation Planning Regulations; Correction

AGENCY: Federal Emergency Management Agency, Department of Homeland Security (DHS).

ACTION: Final rule; correction.

SUMMARY: On September 10, 2021, FEMA published in the **Federal Register** a final rule revising the Federal Emergency Management Agency's Hazard Mitigation Assistance and mitigation planning regulations to reflect current statutory authority and agency practice. This final rule corrects the effective date of this rule to read October 1, 2021.

DATES: This correction is effective September 17, 2021.

ADDRESSES: The docket for this rulemaking is available for inspection using the Federal eRulemaking Portal at *http://www.regulations.gov* and can be viewed by following that website's instructions.

FOR FURTHER INFORMATION CONTACT: Katherine Fox, Assistant Administrator for Mitigation, Federal Emergency Management Agency, 202–646–1046, *Katherine.Fox5@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. 2021–19186, beginning on page 50653 in the **Federal Register** of Friday, September 10, 2021, the following correction is made:

1. On page 50653, in the first column, ''**DATES:** This rule is effective October 12, 2021.'' is corrected to read ''**DATES:** This rule is effective October 1, 2021.''

Deanne B. Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2021–20090 Filed 9–16–21; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[RTID 0648–XA980]

Fisheries of the Exclusive Economic Zone Off Alaska; Standardized Bycatch Reporting Methodology Amendments to the Fishery Management Plans for the Bering Sea/Aleutian Islands King and Tanner Crabs, Scallops, and Salmon

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

ACTION: Notice of agency decision.

SUMMARY: NMFS announces the approval of Amendment 51 to the Fishery Management Plan (FMP) for Bering Sea/Aleutian Islands (BSAI) King and Tanner Crabs (Crab FMP), Amendment 17 to the FMP for the Scallop Fishery Off Alaska (Scallop FMP), and Amendment 15 to the FMP for the Salmon Fisheries in the EEZ Off Alaska (Salmon FMP) (collectively Amendments). These Amendments add to or modify language in the Crab, Scallop, and Salmon FMPs to more transparently reflect and align the FMPs with the way bycatch is currently reported in the fisheries managed by the North Pacific Fishery Management Council (Council). These Amendments are intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act); the Crab, Scallop, and Salmon FMPs; and other applicable laws.

DATES: The Amendments were approved on September 13, 2021.

ADDRESSES: Electronic copies of the Amendments, the Categorical Exclusion, and the Analysis prepared for this action may be obtained from *www.regulations.gov* or from the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/region/alaska.*

FOR FURTHER INFORMATION CONTACT: Megan Mackey, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each regional fishery management council submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a document in the **Federal Register** announcing that the amendment is available for public review and comment.

The Notice of Availability (NOA) for the Amendments was published in the **Federal Register** on June 14, 2021 (86 FR 31474) with a 60-day comment period that ended on August 13, 2021. NMFS received no comments during the public comment period on the NOA.

NMFS determined that the Amendments are consistent with the Magnuson-Stevens Act and other applicable laws, and the Secretary approved the Amendments on September 13, 2021. The June 14, 2021, NOA contains additional information on this action. No changes to Federal regulations are necessary to implement the Amendments.

NMFS manages the crab, scallop, and salmon fisheries in Alaska's exclusive economic zone under the Crab, Scallop, and Salmon FMPs. The Council prepared these FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600, 679, and 680.

Section 303(a)(11) of the Magnuson-Stevens Act requires that any FMP establish a standardized bycatch reporting methodology (SBRM) to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority: (A) Minimize bycatch, and (B) minimize the mortality of bycatch that cannot be avoided (16 U.S.C. 1853(a)(11)).

On January 19, 2017, NMFS published a final rule (82 FR 6317) establishing national guidance for compliance with this requirement. As required by 50 CFR 600.1610(b), regional fishery management councils, in coordination with NMFS, must review their FMPs and make any necessary changes so all FMPs are consistent with the guidance by February 21, 2022.

The national guidance, codified at 50 CFR 600.1605(a), defines an SBRM as ''an established, consistent procedure or procedures used to collect, record, and report bycatch data in a fishery.'' This information, in conjunction with other relevant sources, is used to assess the amount and type of bycatch occurring in the fishery and inform the development of conservation and management measures to minimize bycatch. The regulations require that an FMP identify the required procedure or procedures that constitutes the SBRM for the fishery and explain how the procedure meets the purpose to collect, record, and report bycatch data.

The SBRM final rule requires the Council to explain how the SBRMs meet the stated purpose in the rule based on an analysis of four considerations: (1) Characteristics of bycatch in the fishery, (2) the feasibility of the reporting methodology, (3) the uncertainty of data resulting from the methodology, and (4) how the data will be used to assess the amount and type of bycatch occurring in the fishery (50 CFR 600.1610(a)). The Council must address these considerations when reviewing or establishing an SBRM.

In February 2020, the Council received a report on current FMPs managed by the Council and their consistency with the SBRM final rule. At that meeting, the Council determined that the FMPs for Groundfish of the Bering Sea and Aleutian Islands Management Area, Groundfish of the Gulf of Alaska, and Fish Resources of the Arctic Management Area were in compliance with the SBRM final rule. The Council also determined that the Crab, Scallop, and Salmon FMPs needed to be updated to explicitly identify the SBRMs to be consistent with the SBRM final rule and should therefore be amended.

The Council took final action at its February 2021 meeting. In taking final action, the Council noted that changes to the Crab, Scallop, and Salmon FMPs were necessary to ensure those FMPs are consistent with the Magnuson-Stevens Act and the SBRM final rule. During deliberation, the Council recognized that the Crab, Scallop, and Salmon FMPs currently contain management measures such as the State of Alaska (State)'s Scallop and Crab Observer Programs, industry reports, and fish tickets that provide SBRMs consistent with the national guidance. However, these are not explicitly identified as the SBRM in each FMP.

The Council recommended the three FMPs be amended to explicitly state the SBRMs and explain how they meet the purpose of collecting, recording, and reporting bycatch data. The Council also noted that the descriptions of the management measures that contribute to the SBRM (such as the Crab Observer Program) may be outdated. The Council indicated that the description of these management measures may be updated as the FMPs are amended by this action, and any such updates will be consistent with the SBRM regulations and be done in coordination with the State. Updates to the language of management measures for SBRM consistency will not add any new reporting requirements.

This action does not add any new reporting requirements and does not change any regulatory requirements. This action only adds to or modifies language in the Crab, Scallop, and Salmon FMPs to more transparently reflect and align with how bycatch is currently reported in the fisheries managed by the Council by explicitly stating the SBRM in each fishery.

Crab FMP

The combination of the Crab Observer Program and industry reports provides a standard reporting methodology that is consistent with the SBRM final rule. Descriptions of these management measures currently exist in the Crab FMP; however, the FMP needed to be amended to explicitly identify these methodologies as the SBRM. Amendment 51 to the Crab FMP adds language to Sections 8.1.2, 8.3.1, and 8.3.7 of the FMP to identify the existing SBRM and to explain how it meets the purpose of collecting, recording, and reporting bycatch.

Scallop FMP

The combination of industry reports and the Scallop Observer Program provides a standard reporting methodology that is consistent with the SBRM final rule. Descriptions of these management measures currently exist in the Scallop FMP; however, the FMP needed to be amended to explicitly identify these methodologies as the SBRM. Amendment 17 to the Scallop FMP adds language to Section 3.2.12 of the FMP to identify the SBRM and explain how it meets the purpose of collecting, recording, and reporting bycatch.

Salmon FMP

Fish tickets are the standardized reporting methodology in place for reporting catch of salmon species that are subject to maximum retainable amounts. The Statewide Harvest Survey and creel surveys, as well as the Saltwater Guide Logbooks, are the standardized reporting methodology in place for reporting in the salmon sport fishery and the guided sport fishery. However, the Salmon FMP needed to be amended in order to explicitly identify these methodologies as the SBRM. Amendment 15 to the Salmon FMP adds language to Section 8.1.8 of the FMP (Bycatch Management) to identify the SBRM and explain how it meets the purpose of collecting, recording, and reporting bycatch in the directed commercial salmon fishery. In addition, Amendment 15 adds language to Section 8.1.9 (Sport Fisheries) to identify the SBRM for the salmon sport fishery.

Comments and Responses

During the public comment period for the NOA for the Amendments, NMFS received no comments. NMFS is not disapproving any part of the Amendments.

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

Dated: September 13, 2021.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2021–20089 Filed 9–16–21; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 86, No. 178
Friday, September 17, 2021

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0786; Project Identifier MCAI–2021–00429–A]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2012–06–16, which applies to all Pilatus Aircraft Ltd. (Pilatus) Models PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 airplanes. AD 2012–06–16 requires installing a new rudder and elevator locking screw and modifying the installation of the rudder and elevator hinge bolt. Since the FAA issued AD 2012–06–16, the European Union Aviation Safety Agency (EASA) superseded its mandatory continuing airworthiness information (MCAI) to correct an unsafe condition on these products. This proposed AD would not retain any actions required by AD 2012–06–16 and would require inspecting and modifying the rudder, elevator, and right-hand (RH) aileron hinge bolt installations. 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 Pilatus Aircraft Ltd., Customer Support General Aviation, CH–6371 Stans, Switzerland; phone: +41 848 24 7 365; email: *techsupport.ch@pilatus-aircraft.com;* website: *https://www.pilatus-aircraft.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–2021–0786; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the MCAI, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aviation Safety Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2021–0786; Project Identifier MCAI–2021–00429–A'' 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 AD. Submissions containing CBI should be sent to Doug Rudolph, Aviation Safety Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2012–06–16, Amendment 39–16997 (77 FR 19061, March 30, 2012) (AD 2012–06–16) for Pilatus Models PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 airplanes. AD 2012–06–16 was prompted by MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued EASA AD 2011–0230, dated December 9, 2011, to identify and correct an unsafe condition identified as loose elevator and rudder

hinge bolts caused by incorrect torqueing and locking of the bolts.

AD 2012–06–16 requires installing a new elevator and rudder locking screw and modifying the installation of the elevator and rudder hinge bolt. The FAA issued AD 2012–06–16 to prevent in-flight failure of the elevator or rudder attachment, which could result in loss of control of the airplane.

Actions Since AD 2012–06–16 Was Issued

Since the FAA issued AD 2012–06–16, EASA superseded EASA AD 2011–0230, dated December 9, 2011, and issued EASA AD 2021–0098, dated April 9, 2021 (referred to after this as ''the MCAI''). The MCAI states:

> Occurrences were reported where, on certain PC–6 aeroplanes, the elevator or the rudders was lost or partially detached during flight. All the occurrences happened on PC–6 aeroplanes in CONFIG 1.
>
> This condition, if not corrected, could lead to in-flight failure of the elevator or rudder attachment, possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, Pilatus issued SB 55–001 (original issue and Revision 1) to provide rework instructions for the elevator and rudder hinge bolt locking. Consequently, EASA published AD 2011–0230 to require this rework. Subsequently, Pilatus issued recommended SB 55–003 (later revised) to provide instructions to modify the hinge bolt installation of the elevator and rudder. This [service bulletin] SB, being recommended only, had no impact on the existing EASA AD.
>
> Since that [EASA] AD and the recommended Pilatus SB 55–003 were published, the latest risk assessment determined that the modification of the hinge bolt installation of the elevator, rudder and right-hand (RH) aileron installation must be required to reach an acceptable level of safety for the affected aeroplanes. Consequently, Pilatus issued the SB, as defined in this [EASA] AD, to provide instructions to modify the affected aeroplanes into CONFIG 2 standard.
>
> For the reasons described above, this [EASA] AD supersedes EASA AD 2011–0230 and requires, for certain aeroplanes, a one-time inspection of the elevator and rudder installation, followed by repetitive inspections of the elevator and rudder, and, depending on findings, accomplishment of applicable corrective action(s). This [EASA] AD also requires modification of the elevator, rudder and RH aileron hinge bolt installations into CONFIG 2, which is the terminating action for the repetitive inspections required by this [EASA] AD. Finally, this [EASA] AD prohibits (re)installation of affected parts.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0786.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Pilatus PC–6 Service Bulletin (SB) No. 55–005, dated February 25, 2021 (Pilatus SB 55–005). The service information specifies procedures for repetitively inspecting the hinge bolt installations and taking any necessary corrective actions until the hinge bolt is modified. Modifying the hinge bolt installation in accordance with Pilatus SB 55–005 makes the airplane a CONFIG 2 design. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

Pilatus also issued Pilatus PC–6 SB No. 55–003, dated November 29, 2013; Pilatus PC–6 SB No. 55–003, Revision 1, dated December 9, 2014; Pilatus PC–6 SB No. 55–003, Revision 2, dated January 19, 2017; and Pilatus PC–6 SB No. 55–003, Revision 3, dated November 6, 2017. This service information specifies procedures for modifying the hinge bolt installations, which makes the airplane a CONFIG 2 design. This service information was superseded by Pilatus SB 55–005.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously. This proposed AD would not retain any actions of AD 2012–06–06.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 50 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
Inspecting CONFIG 1 airplanes	4.5 work-hours × $85 per hour = $382.50.	Not applicable	$382.50 per inspection cycle.	$19,125 per inspection cycle.
Modifying from CONFIG 1 to CONFIG 2.	14 work-hours × $85 per hour = $1,190	$1,200	$2,390	$119,500.

The FAA estimates the following costs to do any necessary corrective actions 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 actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Accomplishing corrective actions	.5 work-hours × $85 per hour = $42.50	$200	$242.50

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 that the 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 2012–06–16, Amendment 39–16997 (77 FR 19061, March 30, 2012); and

■ b. Adding the following new airworthiness directive:

Pilatus Aircraft Ltd.: Docket No. FAA–2021–0786; Project Identifier MCAI–2021–00429–A.

(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 2012–06–16, Amendment 39–16997 (77 FR 19061, March 30, 2012).

(c) Applicability

This AD applies to Pilatus Aircraft Ltd. Models PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 airplanes, all serial numbers, certificated in any category.

Note 1 to paragraph (c): These airplanes may also be identified as Fairchild Republic Company airplanes, Fairchild Industries airplanes, Fairchild Heli Porter airplanes, or Fairchild-Hiller Corporation airplanes.

(d) Subject

Joint Aircraft System Component (JASC) Codes 2700, Flight Control System; 2710, Aileron Control System; 2720, Rudder Control System; and 2730, Elevator Control System.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as detachment or partial detachment of the elevator or rudder in flight. The FAA is issuing this AD to prevent failure of the elevator or rudder attachment. The unsafe condition, if not addressed, could result in loss of control of the airplane.

(f) Compliance

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

(g) Definitions

The following definitions apply for purposes of this AD.

(1) Group 1 airplanes: Airplanes that have not been modified in accordance with Pilatus PC–6 Service Bulletin (SB) No. 55–003, dated November 29, 2013 (Pilatus SB 55–003); Pilatus PC–6 SB No. 55–003, Revision 1, dated December 9, 2014 (Pilatus SB 55–003R1); Pilatus PC–6 SB No. 55–003, Revision 2, dated January 19, 2017 (Pilatus 55–003R2); Pilatus PC–6 SB No. 55–003, Revision 3, dated November 6, 2017 (Pilatus 55–003R3); or Pilatus PC–6 SB No. 55–005, dated February 25, 2021 (Pilatus SB 55–005).

(2) Group 2 airplanes: Airplanes that have been modified in accordance with Pilatus SB 55–003, SB 55–003R1, SB 55–003R2, Pilatus SB 55–003R3; or Pilatus SB 55–005.

(h) Inspect Elevator, Rudder, and RH Aileron Hinge Bolt Installations

(1) For Group 1 airplanes: Within 14 days after the effective date of this AD, inspect the elevator, rudder, and RH aileron hinge bolt installations and take any corrective actions before further flight by following the Accomplishment Instructions-Part 1-On Aircraft-Inspection in Pilatus SB 55–005.

(2) For Group 1 airplanes: Within 100 hours time-in-service (TIS) after the inspection required by paragraph (h)(1) of this AD and thereafter at intervals not to exceed 100 hours TIS until the modification required by paragraph (i) of this AD is done, inspect the elevator, rudder, and RH aileron hinge bolt installations and take any corrective actions before further flight by following the Accomplishment Instructions-Part 2-On Aircraft-CONFIG 1-Repeat Inspections in Pilatus SB 55–005.

(i) Modify Group 1 Airplanes

Within 11 months after the effective date of this AD, modify the hinge bolt installations on the elevator, rudder, and RH aileron assemblies by following the Accomplishment Instructions-Part 3-On Aircraft-Modification from CONFIG 1 to CONFIG 2 in Pilatus SB 55–005. Modifying the elevator, rudder, and RH aileron hinge bolt installations terminates the repetitive inspections required by paragraph (h)(2) of this AD.

(j) Installation Prohibition

As of the following applicable compliance time, do not install on any airplane an elevator assembly part number (P/N) 113.50.06.011, 113.50.06.012, 6305.0010.00, 6305.0010.52, 6305.0010.53, 6305.0010.54, or 6305.0010.55, or a rudder assembly P/N 113.40.06.018, 6302.0010.51, or 6302.0010.52.

(1) For Group 1 airplanes: As of the modification required by paragraph (i) of this AD.

(2) For Group 2 airplanes: As of the effective date of this AD.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information or email: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(l) Related Information

(1) For more information about this AD, contact Doug Rudolph, Aviation Safety Engineer, FAA, General Aviation & Rotorcraft

Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2021–0098, dated April 9, 2021, for more information. You may examine the EASA AD in the AD docket at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2021–0786.

(3) For service information identified in this AD, contact Pilatus Aircraft Ltd., Customer Support General Aviation, CH–6371 Stans, Switzerland; phone: +41 848 24 7 365; email: *techsupport.ch@pilatus-aircraft.com;* website: *https://www.pilatus-aircraft.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.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–19961 Filed 9–16–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0792; Project Identifier AD–2020–00593–G]

RIN 2120–AA64

Airworthiness Directives; DG Flugzeugbau GmbH Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all DG Flugzeugbau GmbH Models DG–500MB and DG–1000M gliders with a Solo Kleinmotoren GmbH Solo Model 2625 02i engine installed. This proposed AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as an error in the engine control unit (ECU) software. This proposed AD would require updating the ECU software. 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 Solo Kleinmotoren GmbH, Postfach 600152, D71050 Sindelfingen, Germany; phone: +49 703 1301–0; fax: +49 703 1301–136; email: *aircraft@solo-germany.com;* website: https://aircraft.solo.global/gb/. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0792; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the MCAI, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0792; Project Identifier AD–2020–00593–G'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0056, dated March 13, 2020 (referred to after this as ''the MCAI''), to address an unsafe condition on Solo Kleinmotoren GmbH Solo Model 2625 02 engines, variation 02i with electronic fuel injection, installed on but not limited to Binder Motorenbau, DG-Flugzeugbau and Schempp-Hirth powered sailplanes (gliders). The MCAI states:

> An error was found in the ECU affected SW [software] that can cause brief injection of fuel into one cylinder when the ECU is activated.
>
> This condition, if not corrected, could increase the time needed to (re)start the engine in flight, possibly resulting in reduced control of the powered sailplane.
>
> To address this potential unsafe condition, SOLO Kleinmotoren GmbH, together with the ECU manufactuerer [sic], developed an ECU SW update and issued the SB [service

bulletin] accordingly, providing installation instructions.

For the reason described above, this [EASA] AD requires an update of the ECU software.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0792.

The Model 2625 02i engine does not have an FAA type certificate. For Model DG–1000M gliders, this engine is part of the glider type certification. For Model DG–500MB gliders, this engine may be installed as a Model 2525 02 engine modified with a fuel injection system and re-identified as a Model 2625 02i engine.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Solo Kleinmotoren GmbH Service Bulletin No. 4600–11, dated August 19, 2019. This service information specifies procedures for updating the ECU software to a version that fixes a software error found in previous ECU software versions. 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**.

Proposed AD Requirements in This NPRM

This proposed AD would require updating the ECU software version and would prohibit installing software version V517 Revision 7 or earlier.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 4 gliders of U.S. registry. The FAA estimates that it would take about 2 work-hours per glider to comply with the requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, the FAA estimates the cost of this AD on U.S. operators to be $680 or $170 per glider.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

DG Flugzeugbau GmbH: Docket No. FAA–2021–0792; Project Identifier AD–2020–00593–G.

(a) Comments Due Date

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

(b) Affected ADs

None.

(c) Applicability

This AD applies to DG Flugzeugbau GmbH Models DG–500MB and DG–1000M gliders, all serial numbers, certificated in any category, with a Solo Kleinmotoren GmbH Solo Model 2625 02i engine installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7300, Engine Fuel and Control.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as an error in the engine control unit (ECU) software. The FAA is issuing this AD to prevent an injection of fuel into one cylinder when the ECU is activated. The unsafe condition, if not addressed, could result in difficulty starting the engine and reduced control of the glider.

(f) Compliance

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

(g) Required Actions

(1) Within 3 months after the effective date of this AD, update the ECU software to software version V517 Revision 8 in accordance with the Actions in Solo Kleinmotoren GmbH Service Bulletin No. 4600–11, dated August 19, 2019.

(2) As of the effective date of this AD, do not install ECU software version V517 Revision 7 or earlier on any glider with a Solo Kleinmotoren GmbH Solo Model 2625 02i engine.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (i)(1) of this AD, Related Information, or email: *9-AVS-AIR-730-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector,

or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(i) Related Information

(1) For more information about this AD, contact Jim Rutherford, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2020–0056, dated March 13, 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–2021–0792.

(3) For service information identified in this AD, contact Solo Kleinmotoren GmbH, Postfach 600152, D71050 Sindelfingen, Germany; phone: +49 703 1301–0; fax: +49 703 1301–136; email: *aircraft@solo-germany.com;* website: https://aircraft.solo.global/gb/. 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 13, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–20034 Filed 9–16–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0795; Project Identifier 2019–CE–054–AD]

RIN 2120–AA64

Airworthiness Directives; Daher Aerospace (Type Certificate Previously Held by SOCATA) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Daher Aerospace (type certificate previously held by SOCATA) Models TB 20 and TB 21 airplanes. This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracks on the main landing gear (MLG) legs. This proposed AD would require repetitively inspecting the MLG and performing all applicable corrective actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by 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 Daher Aircraft Inc., Pompano Beach Airpark, 601 NE 10th Street, Pompano Beach, FL 33060; phone: (954) 893–1400; website: *www.tbm.aero.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0795; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the MCAI, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Gregory Johnson, Aviation Safety Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106; phone: (720) 626–5462; fax: (816) 329–4090; email: *gregory.johnson@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 the **ADDRESSES** section. Include ''Docket No. FAA–2021–0795; Project Identifier 2019–CE–054–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 proposed AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Gregory Johnson, Aviation Safety Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0274, dated November 6, 2019 (referred to after this as ''the MCAI''), to address an unsafe condition on all Daher Aerospace (formerly SOCATA) Models TB 20 and TB 21 airplanes. The MCAI states:

> Occurrences have been reported of finding cracks on MLG legs of TB 20 and TB 21 aeroplanes.
>
> This condition, if not detected and corrected, could lead to structural failure of an MLG leg and consequent MLG collapse, possibly resulting in damage to the aeroplane and injury to occupants.

To address this potential unsafe condition, DAHER Aerospace issued the [service bulletin] SB to provide inspection instructions.

For the reasons described above, this [EASA] AD requires repetitive special detailed inspections (SDI) using magnetic particle method of the affected MLG area, and, depending on findings, accomplishment of applicable corrective action(s).

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0795.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Daher Service Bulletin SB 10–154–32, dated September 2019. The service information contains procedures for repetitively inspecting the MLG area for cracks and performing any rework and repair. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information already described.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 52 airplanes of U.S. registry. The FAA also estimates that it would take about 8 work-hours per airplane to perform the magnetic particle inspection that would be required by this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, the FAA estimates the inspection cost of this proposed AD on U.S. operators to be $35,360, or $680 per airplane, per inspection cycle.

In addition, the FAA estimates that any necessary rework would take 12 work-hours and require parts costing $400, for a cost of $1,420 per airplane. The FAA has no way of determining the number of airplanes that may need these actions. If the reworked MLG area is found damaged during a follow-on magnetic particle inspection, because the damage may vary considerably from airplane to airplane, the FAA has no way of estimating this repair 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 determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Daher Aeropsace (Type Certificate Previously Held by SOCATA): Docket No. FAA–2021–0795; Project Identifier 2019–CE–054–AD.

(a) Comments Due Date

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

(b) Affected ADs

None.

(c) Applicability

This AD applies to Daher Aerospace (type certificate previously held by SOCATA) Models TB 20 and TB 21 airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 3200, Landing Gear System.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracks on the main landing gear (MLG) legs. The FAA is issuing this AD to prevent structural failure of an MLG leg and consequent collapse of the MLG. The unsafe condition, if not addressed, could result in damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Repetitive Inspections

(1) Before the MLG exceeds 16,000 landings since first installation on an airplane or within 200 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 3,200 landings, accomplish the magnetic particle inspection on each MLG for cracks in the left-hand and right-hand MLG leg and take all applicable corrective actions before further flight in accordance with the Description of Accomplishment Instructions in Daher Service Bulletin SB 10–154–32, dated September 2019, except you are not required to contact the manufacturer. Instead, repair using a method approved by the Manager, International Validation Branch, FAA; the European Union Aviation Safety Agency (EASA); or Daher Aerospace's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature. For a

repair to be approved as required by this paragraph, the approval letter must specifically refer to this AD.

(2) For the purposes of this AD, any maneuver resulting in weight on the MLG for any duration of time after initial takeoff counts as a landing. If the number of landings for the MLG is unknown, multiply the number of airframe hours by a factor of 3.6 and round up to the nearest whole landing.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, General Aviation & Rotorcraft 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 local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information or email: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(i) Related Information

(1) For more information about this AD, contact Gregory Johnson, Aviation Safety Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106; phone: (720)-626–5462; fax: (816) 329–4090; email: *gregory.johnson@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2019–0274, dated November 6, 2019, 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–2021–0795.

(3) For service information identified in this AD, contact Daher Aircraft Inc., Pompano Beach Airpark, 601 NE 10th Street, Pompano Beach, FL 33060; phone: (954) 893–1400; website: *www.tbm.aero.* 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 8, 2021.

Ross Landes,

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

[FR Doc. 2021–19962 Filed 9–16–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0216; Project Identifier 2018–CE–061–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Gulfstream Aerospace Corporation (Gulfstream) Models GV and GV–SP airplanes. This proposed AD was prompted by the omission of a life limit in the airworthiness limitations section (ALS) of the maintenance manual for a certain main landing gear (MLG) trunnion pin. This proposed AD would require revising the ALS of your existing instructions for continued airworthiness (ICA) or inspection program for the airplane to establish a life limit of 20,000 flight cycles for the affected MLG trunnion pin. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by 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 Gulfstream Aerospace Corporation, Technical Publications Dept., 500 Gulfstream Road, Savannah, GA 31402–2206; phone: (800) 810–4853; fax: (912) 965–3520; email: *pubs@gulfstream.com;* website: *https://www.gulfstream.com/en/customer-support/.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0216; 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: Miral Patel, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5590; fax: (404) 474–5606; email: *miral.patel@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0216; Project Identifier 2018–CE–061–AD'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be

placed in the public docket of this NPRM. Submissions containing CBI should be sent to Miral Patel, 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

Gulfstream notified the FAA that a life limit for replacing MLG trunnion pin part number (P/N) 1159SCL566–15 had been omitted from the ALS of the maintenance manual for Models GV and GV–SP airplanes. Gulfstream revised the ALS for the applicable airplanes to establish a life limit of 20,000 flight cycles for the affected MLG trunnion pin. A trunnion pin remaining in service beyond its fatigue life could lead to fracture and failure of the trunnion pin. This condition, if unaddressed, could result in MLG failure and could lead to a runway excursion.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information

The FAA reviewed Gulfstream GV Aircraft Maintenance Manual, Revision 53, dated March 15, 2021; Gulfstream G550 Aircraft Maintenance Manual, Revision 34, dated March 15, 2021; and Gulfstream G500–5000 Aircraft Maintenance Manual, Revision 34, dated March 15, 2021. For the applicable marketing designation specified on each document, the revised service information adds a life limit for MLG trunnion pin P/N 1159SCL566–15.

Proposed AD Requirements in This NPRM

This proposed AD would require revising the ALS of the existing ICA or inspection program for the airplane to establish a life limit of 20,000 flight cycles for MLG trunnion pin P/N 1159SCL566–15.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 516 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
Revise the ALS	1 work-hour × $85 per hour = $85	Not applicable	$85	$43,860

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Gulfstream Aerospace Corporation: Docket No. FAA–2021–0216; Project Identifier 2018–CE–061–AD.

(a) Comments Due Date

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

(b) Affected ADs

None.

(c) Applicability

This AD applies to Gulfstream Aerospace Corporation Models GV and GV–SP airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 3200, Landing Gear System.

(e) Unsafe Condition

This AD was prompted by the omission of a life limit in the airworthiness limitations section (ALS) for a certain main landing gear (MLG) trunnion pin. The FAA is issuing this AD to prevent a MLG trunnion pin from remaining in service beyond its fatigue life. This unsafe condition, if not addressed, could result in MLG failure and could lead to a runway excursion.

(f) Compliance

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

(g) Revise the ALS

Within 12 months after the effective date of this AD, revise the existing ALS of the instructions for continued airworthiness or aircraft inspection program for your airplane by establishing a life limit of 20,000 flight cycles for each MLG trunnion pin part number 1159SCL566–15.

Note 1 to paragraph (g) of this AD: Table 5 in Section 05–10–10 of the following aircraft maintenance manuals contains the life limit in paragraph (g) of this AD: Gulfstream GV Aircraft Maintenance Manual,

Revision 53, dated March 15, 2021; Gulfstream G550 Aircraft Maintenance Manual, Revision 34, dated March 15, 2021; or Gulfstream G500–5000 Aircraft Maintenance Manual, Revision 34, dated March 15, 2021.

(h) 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 paragraph (i)(1) of this AD.

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

(i) Related Information

(1) For more information about this AD, contact Miral Patel, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5590; fax: (404) 474–5606; email: *miral.patel@faa.gov.*

(2) For service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., 500 Gulfstream Road, Savannah, GA 31402–2206; phone: (800) 810–4853; fax: (912) 965–3520; email: *pubs@gulfstream.com;* website: *https://www.gulfstream.com/en/customer-support/.* 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 13, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–20033 Filed 9–16–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0461; Airspace Docket No. 17–AEA–5]

RIN 2120–AA66

Proposed Amendment of VOR Federal Airways V–16, V–31, V–93, V–157, V–213, and V–229 in the Vicinity of Patuxent River, MD

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: The FAA is withdrawing the NPRM published in the **Federal Register** on July 12, 2017, proposing to amend VHF Omnidirectional Range (VOR) Federal airways V–16, V–31, V–93, V–157, V–213, and V–229 near Patuxent River, MD, due to the planned decommissioning of the Patuxent VOR/Tactical Air Navigation (VORTAC) (PXT), Patuxent River, MD, in support of the FAA's VOR Minimum Operational Network (MON) program. Subsequent to the NPRM, the PXT VORTAC decommissioning has been delayed until a to-be-determined date. The FAA decided that additional planning is necessary to ensure a more efficient implementation and integration with other ongoing VOR MON program activities, and determined that withdrawal of the proposed rule is warranted.

DATES: Effective September 17, 2021, the proposed rule published July 12, 2017 (82 FR 32149), is withdrawn.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

The FAA published a notice of proposed rulemaking in the **Federal Register** for Docket No. FAA–2017–0461 (82 FR 32149; July 12, 2017), amending VOR Federal airways V–16, V–31, V–93, V–157, V–213, and V–229 due to the planned decommissioning of the Patuxent VORTAC which provides navigation guidance for portions of the affected airways. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One comment was received. The commenter recommended that for VOR NAVAIDs that are to be decommissioned, and for those airways that are correspondingly removed, the FAA should create an Area Navigation (RNAV) waypoint at the previous NAVAID location, and convert all fixes and intersections along that route to RNAV waypoints.

FAA's Conclusions

The FAA has reviewed the Patuxent VORTAC decommissioning project and determined that additional planning meetings are warranted to ensure a more efficient implementation and integration with other ongoing program activities; therefore, the NPRM is withdrawn.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal

■ Accordingly, pursuant to the authority delegated to me, the NPRM published in the **Federal Register** on July 12, 2017 (82 FR 32149), FR Doc. 2017–14524, is hereby withdrawn.

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.

Issued in Washington, DC, on September 13, 2021.

George Gonzalez,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2021–20010 Filed 9–16–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket No. RM21–18–000]

Petition for Rulemaking: American Gas Association, American Public Gas Association, American Forest & Paper Association, Industrial Energy Consumers of America, Process Gas Consumers Group, Natural Gas Supply Association

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Petition for rulemaking.

SUMMARY: Take notice that, on June 24, 2021, American Gas Association, American Public Gas Association, American Forest & Paper Association, Industrial Energy Consumers of America, Process Gas Consumers Group, and Natural Gas Supply Association (collectively, Petitioners), pursuant to Rule 207(a)(4) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, filed a petition requesting that the Commission revise its regulations and/or filing procedures for natural gas pipelines regarding the filing of information in native file format. Specifically, Petitioners request that the Commission institute a rulemaking to revise its regulations for electronic filings of tariffs and related materials, or alternatively, issue an order revising and updating the FERC *Implementation Guide for Electronic Tariff Filings* (2016), to require the submission of all supporting statements, schedules, and workpapers in native format (*e.g.,* Excel)

with all cells, links, and formulas intact when a natural gas pipeline files for a change in rates or charges.

DATES: Comments due 5:00 p.m. Eastern time on September 29, 2021.

ADDRESSES: The Commission strongly encourages electronic filings of comments in lieu of paper using the ''eFile'' link at *http://www.ferc.gov*. 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.

FOR FURTHER INFORMATION CONTACT: Jeffrey Sherman, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8633, *Jeffrey.Sherman@ferc.gov*.

SUPPLEMENTARY INFORMATION: Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on Petitioners. 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 (*https://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 Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Issued: September 8, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–19771 Filed 9–16–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0661]

RIN 1625–AA11

Regulated Navigation Area; Offshore, Cape Canaveral, Florida

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to replace the existing safety zone in Captain of the Port Zone Jacksonville, Offshore Cape Canaveral, Florida with a regulated navigation area (RNA). The existing safety zone is composed of four large regulated areas and was established in 2009 with the intent of protecting vessels from risks posed from rockets launching from facilities on Cape Canaveral. Changes in the type and size of launch vehicles, rocket component recovery methods, and the increased frequency of launches pose variable risks to marine traffic and require a more flexible regulatory tool. The proposed RNA would encompass all waters within typical rocket flight trajectories originating from launch complexes on and around Cape Canaveral, FL and out to 12 nautical miles. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before October 18, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2021–0661 using the Federal Decision Making Portal at *https://www.regulations.gov*. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. A. Eugene Stratton, Seventh District, Waterways Management Branch (DPW), U.S. Coast Guard; telephone 305–415–6750, email *a.eugene.stratton@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

The Coast Guard is proposing to replace the existing safety zone in 33 CFR 165.775 titled ''Safety Zone; Captain of the Port Zone Jacksonville; Offshore Cape Canaveral, Florida'' with a regulated navigation area (RNA). The existing safety zone is composed of four large regulated areas and was established in 2009 with the intent of protecting marine traffic from the hazards associated with the launching of space vehicles, to expedite notification to the public, and to reduce the administrative workload of the Coast Guard. Changes in the type and size of launch vehicles, rocket component recovery methods, and the increased frequency of launches pose variable risks to marine traffic and require a more flexible regulatory tool. The proposed RNA would encompass all waters within typical rocket flight trajectories originating from launch complexes on and around Cape Canaveral, FL and out to 12 nautical miles. We invite your comments on this proposed rulemaking.

The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5, and Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

III. Discussion of Proposed Rule

The Seventh Coast Guard District Commander is proposing to replace the existing Offshore Cape Canaveral Safety Zone in 33 CFR 165.775, with a RNA. Prior to the safety zone that was established in 2009, the Captain of the Port (COTP) Jacksonville issued temporary federal regulations for each rocket launch from Cape Canaveral Air Force Station, now called Cape Canaveral Space Force Station. At the time, 12–15 launches a year was typical. The four ''zones'' were based on historical and projected launch azimuth data and designed in collaboration with the U.S. Air Force, 45th Space Wing Range Operations and Safety Departments and U.S. Coast Guard Space Transportation Systems program office in Port Canaveral, FL.

Contemporary flight analyses models and risk assessments are more advanced and require a far smaller hazard area for typical launches than the four ''zones''

established in the Offshore Cape Canaveral Safety Zone of 2009. For most launches originating from Cape Canaveral, the existing safety zones are far too large and enforcement of them may unnecessarily restrict vessel traffic.

Rocket launch activity has doubled since 2009. In 2020 the 45th Space Wing (now designated as Space Launch Delta 45 under the U.S. Space Force) launched 39 missions which required 20 activations of the 2009 safety zone. The type, configuration, and mission profile of contemporary governmental and commercial rockets adds additional variability to risk assessments and requires a more adaptable regulatory tool.

A Safety Zone, as defined in 33 CFR 165.20, is intended to limit access to a hazardous area to authorized persons, vehicles, or vessels. Given the rapidly changing nature of space launch operations in the area, an RNA, as defined in 33 CFR 165.11, which allows the control of vessel traffic with more flexibility and expediency, is the more appropriate regulatory tool.

This RNA is not meant to replace, alter, or conflict with Coast Guard security zones as described in 33 CFR 165.701, Vicinity, Kennedy Space Center, Merritt Island, FL; or 33 CFR 165.705, Port Canaveral Harbor, Cape Canaveral Air Force Station, FL. The regulatory text we are proposing appears at the end of this document.

We propose the following area to be a RNA: All waters offshore Cape Canaveral from surface to bottom, encompassed by a line connecting the following points beginning with Point 1 at 28°48′54″ N, 80°28′40″ W; thence southwest to Point 2 at 28°43′20″ N, 80°41′ W; thence south along the shoreline to Point 3 at 28°26′40″ N, 80°32′49″ W; thence continuing south offshore to Point 4 at 28°10′ N, 80°23′20″ W; thence east Point 5 at 28°10′ N, 80°21′13″ W; thence north along the 12 nautical mile line back to Point 1. Coordinates are in WGS 1984. These coordinates are based on the furthest north and south trajectories of typical rocket launch vehicles originating from Cape Canaveral. In addition, there are five typical launch exclusion areas that cover the majority of rocket launches. We list the coordinates and locations of the five typical launch exclusion areas in the regulatory text.

When the RNA is deemed activated, the COTP or a designated representive would be able to restrict vessel movement including but not limited to transiting, anchoring, or mooring within this RNA to protect vessels from hazards associated with rocket launches. These restrictions are temporary in nature and would only be enacted and enforced prior to and just after a successful launch. The COTP would be able to activate any single area, a combination of areas, or establish ad hoc areas within the RNA boundary area as warranted by the specific risks posed by individual launches.

The COTP would inform the public of the activation or status of the RNA by Broadcast Notice to Mariners on VHF–FM channel 16, Public Notice of Enforcement, on-scene presence, and by the display of a yellow ball from a 90-foot pole near the shoreline.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

The RNA will operate in a similar way to the existing safety zone, but will reduce the size of exclusionary areas for each typical rocket launch. We expect the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. The RNA will only be activated a reasonable time before a launch and deactivated once the area is no longer hazardous.

B. Impact on Small Entities

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

The total time of the RNA activation and thus restriction to the public is expected to be approximately one hour per launch. Vessels would be able to transit around the activated RNA locations during these launches. We do not anticipate any significant economic impact resulting from activation of the RNA.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person

listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the activation of a regulated navigation area with exclusionary zones smaller than the existing safety zones. The activation of the RNA is expected to be an hour total. Normally such actions are categorically excluded from further review under paragraph L60a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov*. To do so, go to *https://www.regulations.gov,* type USCG–2021–0661 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Revise § 165.775 to read as follows:

§ 165.775 Regulated Navigation Area; Launch Area Offshore Cape Canaveral, FL.

(a) *Location.* (1) The following area is a regulated navigation area (RNA): All waters offshore Cape Canaveral from surface to bottom, encompassed by a line connecting the following points beginning with Point 1 at 28°48′54″ N, 80°28′40″ W; thence southwest to Point 2 at 28°43′20″ N, 80°41′ W; thence south along the shoreline to Point 3 at 28°26′40″ N, 80°32′49″ W; thence continuing south offshore to Point 4 at 28°10′ N, 80°23′20″ W; thence east Point 5 at 28°10′ N, 80°21′13″ W; thence north along the 12 nautical mile line back to Point 1. Coordinates are in WGS 1984. These coordinates are based on the furthest north and south trajectories of typical rocket launch vehicles originating from Cape Canaveral.

(2) While restrictions may be enforced anywhere within the boundaries of the RNA, there are five typical launch exclusion areas that cover the majority of rocket launches. Typical launch hazard areas include all navigable waters within the following coordinates, encompassed by a line starting at Point 1 connecting the following points:

(i) Northeast Launch Hazard Area:

Point 1 ...	28°47′47″ N	080°27′48″ W
Point 2 ...	28°42′18″ N	080°34′55″ W
Point 3 ...	28°39′13″ N	080°37′49″ W
Point 4 ...	28°32′29″ N	080°33′53″ W
Point 5 ...	28°34′00″ N	080°29′00″ W
Point 6 ...	28°39′43″ N	080°21′57″ W

(ii) East Northeast Launch Hazard Area:

Point 1 ...	28°43′53″ N	080°24′50″ W
Point 2 ...	28°36′10″ N	080°35′20″ W
Point 3 ...	28°31′46″ N	080°33′40″ W
Point 4 ...	28°34′42″ N	080°28′40″ W
Point 5 ...	28°40′45″ N	080°22′28″ W

(iii) Large East Launch Hazard Area:

Point 1 ...	28°40′32″ N	080°22′21″ W
Point 2 ...	28°39′14″ N	080°37′48″ W
Point 3 ...	28°27′00″ N	080°31′55″ W
Point 4 ...	28°27′35″ N	080°17′48″ W

(iv) Small East Launch Hazard Area:

Point 1 ...	28°38′28″ N	080°21′24″ W
Point 2 ...	28°39′00″ N	080°31′00″ W
Point 3 ...	28°38′00″ N	080°36′58″ W
Point 4 ...	28°32′00″ N	080°33′45″ W
Point 5 ...	28°31′32″ N	080°18′35″ W

(v) Southeast Launch Hazard Area:

Point 1 ...	28°37′00″ N	080°29′00″ W
Point 2 ...	28°35′48″ N	080°34′59″ W

Point 3 ...	28°26′40″ N	080°32′49″ W
Point 4 ...	28°10′00″ N	080°23′20″ W
Point 5 ...	28°10′00″ N	080°21′13″ W
Point 6 ...	28°23′10″ N	080°18′41″ W

(b) *Definitions.* The following definitions apply to this section:

Designated representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Captain of the Port (COTP) Jacksonville in the enforcement of RNAs, safety zones, and security zones.

(c) *Regulations.* (1) The COTP or a designated represented may restrict vessel movement including but not limited to transiting, anchoring, or mooring within this RNA to protect vessels from hazards associated with rocket launches. These restrictions are temporary in nature and will only be enacted and enforced prior to and just after a successful launch.

(2) The COTP may activate any single area, a combination of areas, or establish ad hoc areas within the RNA boundary area as warranted by the specific risks posed by individual launches.

(d) *Notice of activation of RNA.* The COTP will inform the public of the activation or status of the RNA by Broadcast Notice to Mariners on VHF–FM channel 16, Public Notice of Enforcement, on-scene presence, and by the display of a yellow ball from a 90-foot pole near the shoreline at approximately 28°35′00″ N, 080°34′36″ W and from a 90-foot pole near the shoreline at approximately 28°55′18″ N, 080°35′00″ W. Coast Guard assets or other Federal, State, or local law enforcement assets will be clearly identified by lights, markings, or with agency insignia.

(e) *Contact information.* The COTP Jacksonville may be reached by telephone at (904) 564–7513. Any on-scene Coast Guard or designated representative assets may be reached on VHF–FM channel 16.

Dated: September 13, 2021.

Brendan C. McPherson,

Rear Admiral, Commander, Seventh Coast Guard District.

[FR Doc. 2021–20105 Filed 9–16–21; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0354; FRL–8958–01–R4]

Air Plan Approval; North Carolina; Mecklenburg Air Quality Permit Rules Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision to the Mecklenburg County portion of the North Carolina SIP, hereinafter referred to as the Mecklenburg Local Implementation Plan (LIP). The revision was submitted by the State of North Carolina, through the North Carolina Division of Air Quality (NCDAQ), on behalf of Mecklenburg County Air Quality (MCAQ) via a letter dated April 24, 2020, and was received by EPA on June 19, 2020. The revision updates several Mecklenburg County Air Pollution Control Ordinance (MCAPCO) rules incorporated into the LIP and adds several rules. EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before October 18, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2021–0354 at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Evan Adams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9009. Mr. Adams can also be reached via electronic mail at *adams.evan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Overview

The Mecklenburg County LIP was submitted to EPA on June 14, 1990, and EPA approved the plan on May 2, 1991. *See* 56 FR 20140. Mecklenburg County is now requesting that EPA approve updates and additions to the LIP for, among other things, general consistency with the North Carolina SIP.[1] Mecklenburg County prepared three submittals in order to modify the LIP and reflect regulatory and administrative changes that NCDAQ has made to the North Carolina SIP.[2] The three submittals were submitted to EPA as follows: NCDAQ transmitted the October 25, 2017, submittal to EPA but withdrew it from review through a letter dated February 15, 2019. On April 24, 2020, NCDAQ resubmitted the October 25, 2017, update to EPA and also submitted the January 21, 2016, and January 14, 2019, updates. Due to an inconsistency with public notice at the local level, these submittals were withdrawn from EPA through a letter dated February 15, 2019. Mecklenburg County corrected this error, and NCDAQ submitted the updates in a revision dated April 24, 2020.[3]

II. What action is EPA proposing to take?

The April 24, 2020, revision includes updates to and additions of several MCAPCO rules. The January 21, 2016, changes from MCAQ include updates to MCAPCO Rule 1.5214—*Commencement of Operation;* and the January 14, 2019, changes from MCAQ include updates to MCAPCO Rules 1.5212—*Applications;* 1.5213—*Action on Application; Issuance of Permit;* 1.5215—*Application Processing Schedule;* 1.5219—*Retention of Permit at Permitted Facility;* 1.5221—

[1] Hereinafter, the terms ''North Carolina SIP'' and ''SIP'' refer to the North Carolina regulatory portion of the North Carolina SIP (*i.e.,* the portion that contains SIP-approved North Carolina regulations).

[2] The Mecklenburg County, North Carolina revision that is dated April 24, 2020, and received by EPA on June 19, 2020, is comprised of three previous submittals—one dated January 21, 2016; one dated October 25, 2017; and one dated January 14, 2019.

[3] EPA notes that the April 24, 2020, submittal was received by EPA on June 19, 2020.

Permitting of Numerous Similar Facilities; 1.5222—*Permitting of Facilities at Multiple Temporary Sites;* and 1.5232—*Issuance, Revocation, and Enforcement of Permits.*[4] Additionally, the January 14, 2019, portion of the revision requests approval of MCAPCO Rules 1.5217—*Confidential Information;* 1.5218—*Compliance Schedule for Previously Exempted Activities;* and 1.5220—*Applicability Determinations.*[5] The remainder of this section discusses all of the aforementioned rules and any proposed changes.

A. Rule 1.5212, ''*Applications*''

The April 24, 2020, revision modifies Rule 1.5212, *Applications,* under Article 1.0000, *Permitting Provisions for Air Pollution Sources, Rules and Operating Regulations for Acid Rain Sources, Title V and Toxic Air Pollutants,* by correcting grammatical errors and updating references. MCAQ also added language concerning procedures for submitting determination letters to the Director and language concerning the submittal of confidential information. This rule outlines the procedures that permit applicants should follow to complete a permit application for MCAQ. EPA last approved changes to the LIP-approved version of the rule on June 30, 2003. *See* 68 FR 38631. The current changes to Rule 1.5212 remove redundant language and reference Rule 1.5102, *Definitions,* in order to streamline the rule and better outline the official responsible for reviewing the permit applications. The North Carolina SIP has an analog rule at 15A NCAC 02Q .0304, *Applications,* which EPA most recently revised on March 1, 2021. *See* 86 FR 11875. EPA is proposing to approve the updates to Rule 1.5212 because the changes improve clarity of the rule, better define the individual or individuals responsible for reviewing permit applications, and better align the LIP with the SIP.

B. Rule 1.5213, ''*Action on Application; Issuance of Permit*''

The April 24, 2020, revision modifies Rule 1.5213, *Action on Application; Issuance of Permit,* by correcting grammatical errors and updating references. This rule outlines, among other things, the schedule, public participation requirements, and steps that must be completed for a facility to be issued a permit. EPA last approved changes to the LIP-approved version of the rule on June 30, 2003. *See* 68 FR 38631. The North Carolina SIP has an analog rule at 15A NCAC 02Q .0308, *Final Action on Permit Applications,* which EPA most recently revised on March 1, 2021. *See* 86 FR 11875. EPA is proposing to approve the updates to Rule 1.5213 because the changes improve the clarity of the rule and better align the LIP with the SIP.

C. Rule 1.5214, ''*Commencement of Operation*''

The April 24, 2020, revision modifies Rule 1.5214, *Commencement of Operation,* by updating the list of permitting rules triggering an inspection within 90 days after MCAQ receives a notification of completion. EPA last approved changes to the LIP-approved version of the rule on June 30, 2003. *See* 68 FR 38631. Rule 1.5214 outlines, among other things, the requirements for a permittee to notify MCAQ of the completion of construction, alteration, or installation and its intent to commence operation and identifies the sources subject to inspection within 90 days after providing such notice. The change updates the reference to MCAQ's rule on *National Emissions Standards for Hazardous Air Pollutants* from Rule 2.0525 to Rule 2.1110.[6] EPA is proposing to approve the update to Rule 1.5214 because the change corrects an erroneous cross-reference.

D. Rule 1.5215, ''*Application Processing Schedule*''

The April 24, 2020, revision modifies Rule 1.5215, *Application Processing Schedule,* by making minor regulatory updates and grammatical corrections. This rule outlines a schedule that MCAQ must follow for processing applications for permits, permit modifications, and permit renewals. EPA last approved changes to the LIP-approved version of the rule on June 30, 2003. *See* 68 FR 38631. The regulatory revision states the Director shall cease processing of an application if it contains insufficient information to complete a review. Previously, the Rule stated that the Director may return the application if incomplete. The North Carolina SIP has an analog rule at 15A NCAC 02Q .0312, *Application Processing Schedule,* which EPA most recently revised on March 1, 2021. *See* 86 FR 11875. EPA is proposing to approve the updates to Rule 1.5214 because the changes are minor in nature and better align the LIP with the SIP.

E. Rule 1.5217, ''*Confidential Information*''

The April 24, 2020, revision includes Rule 1.5217, *Confidential Information,* regarding the submittal, evaluation, and handling of confidential information. The North Carolina SIP has an analog rule at 15A NCAC 02Q .0107, *Confidential Information,* which EPA most recently revised on July 17, 2020. *See* 85 FR 43461. EPA is proposing to incorporate Rule 1.5217 into the LIP to better align the LIP with the SIP.

F. Rule 1.5218, ''*Compliance Schedule for Previously Exempted Activities*''

The April 24, 2020, revision includes Rule 1.5218, *Compliance Schedule for Previously Exempted Activities,* which contains the schedule for permit application or revision for sources that were exempt from permitting but are now required to be permitted because of a change in permit exemptions or because the source became subject to 40 CFR part 63. The North Carolina SIP has an analog rule at 15A NCAC 02Q .0109, *Compliance Schedule for Previously Exempted Activities,* which EPA most recently revised on July 17, 2020. *See* 85 FR 43461. EPA is proposing to approve incorporate Rule 1.5218 into the LIP to add certainty regarding the permitting schedule for certain facilities and better align the LIP with the SIP.

G. Rule 1.5219, ''*Retention of Permit at Permitted Facility*''

The April 24, 2020, revision modifies Rule 1.5219, *Retention of Permit at Permitted Facility,* by making minor grammatical corrections. EPA incorporated this rule into the LIP on July 28, 1995, and it requires permitted facilities to retain copies of all active permits at the facility identified in the permit. *See* 60 FR 38715. The North Carolina SIP has an analog rule at 15A NCAC 02Q .0110, *Retention of Permit at Permitted Facility,* which EPA most recently revised on July 17, 2020. *See* 85 FR 43461. EPA is proposing to approve the updates to Rule 1.5219 because they are minor grammatical corrections and better align the LIP with the SIP.

H. Rule 1.5220, ''*Applicability Determinations*''

The April 24, 2020, revision includes Rule 1.5220, *Applicability Determinations,* which states that any person can write the Director requesting a determination as to whether a source that the person owns or operates or proposes to own or operate is subject to

[4] The April 24, 2020 revision contains changes to other Mecklenburg LIP-approved rules that are not addressed in this notice. EPA will be acting on those rules in separate actions.

[5] MCAPCO Rules 1.5217—*Confidential Information;* 1.5218—*Compliance Schedule for Previously Exempted Activities;* and 1.5220—*Applicability Determinations* were erroneously included in the table at 40 CFR 52.1770(c).

[6] Although not shown by underlined text as a change in the January 21, 2016, submittal, this correction is the only change made to the LIP-approved version of Rule 1.5214.

Article 1.0000 permitting requirements. The North Carolina SIP has an analog rule at 15A NCAC 02Q .0111, *Applicability Determinations,* which EPA most recently revised on July 17, 2020. *See* 85 FR 43461. EPA is proposing to incorporate Rule 1.5218 into the LIP to better align the LIP with the SIP.

I. Rule 1.5221, ''*Permitting of Numerous Similar Facilities*''

The April 24, 2020, revision modifies Rule 1.5221, *Permitting of Numerous Similar Facilities,* by making grammatical corrections. EPA incorporated this rule into the LIP on July 28, 1995, and it states that the Director shall not issue a single permit for multiple facilities unless there is no difference between the facilities that would require special permit conditions for any individual facility and no unique analysis is required for any facility covered by the permit. *See* 60 FR 38715. The North Carolina SIP has an analog rule at 15A NCAC 02Q .0310, *Permitting of Numerous Similar Facilities,* which EPA most recently revised on March 1, 2021. *See* 86 FR 11875. EPA is proposing to approve the updates to Rule 1.5221 because they are minor grammatical corrections and better align the LIP with the SIP.

J. Rule 1.5222, ''*Permitting of Facilities at Multiple Temporary Sites*''

The April 24, 2020, revision modifies Rule 1.5222, *Permitting of Facilities at Multiple Temporary Sites,* by making minor grammatical corrections. EPA initially incorporated this rule into the LIP on July 28, 1995, which governs the permitting of a facility or source at multiple temporary operating sites. *See* 60 FR 38715. The North Carolina SIP has an analog rule at 15A NCAC 02Q .0311, *Permitting of Facilities at Multiple Temporary Sites,* which EPA most recently revised on March 1, 2021. *See* 86 FR 11875. EPA is proposing to approve the updates to Rule 1.5222 because the changes are minor grammatical corrections and better align the LIP with the SIP.

K. Rule 1.5232, ''*Issuance, Revocation, and Enforcement of Permits*''

The April 24, 2020, revision modifies Rule 1.5232, *Issuance, Revocation, and Enforcement of Permits,* by making minor grammatical corrections. Among other things, this rule identifies criteria for revoking or modifying a permit issued under Section 1.5200—*Air Quality Permits* or Section 1.5600—*Transportation Facility Procedures* and enforcement provisions for the failure to apply for and obtain a permit under Section 1.5200 and for violations of a Section 1.5200 permit. EPA last approved changes to Rule 1.5232 on June 30, 2003. *See* 68 FR 38631. EPA is proposing to approve the updates to Rule 1.5215 because the changes are minor grammatical corrections.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporated by reference MCAPCO Rule 1.5214—*Commencement of Operation,* which has an effective date of December 15, 2015; and Rules 1.5212—*Applications;* 1.5213—*Action on Application; Issuance of Permit;* 1.5215—*Application Processing Schedule;* 1.5217—*Confidential Information;* 1.5218—*Compliance Schedule for Previously Exempted Activities;* 1.5219—*Retention of Permit at Permitted Facility;* 1.5220—*Applicability Determinations;* 1.5221—*Permitting of Numerous Similar Facilities;* 1.5222—*Permitting of Facilities at Multiple Temporary Sites;* and 1.5232—*Issuance, Revocation, and Enforcement of Permits,* all of which have an effective date of December 18, 2018, into the Mecklenburg County portion of the North Carolina SIP. EPA has made and will continue to make these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

V. Proposed Action

EPA is proposing to approve the aforementioned changes to the Mecklenburg LIP. Specifically, EPA is proposing to approve updates to MCAPCO Rules 1.5212—*Applications;* 1.5213—*Action on Application; Issuance of Permit;* 1.5215—*Application Processing Schedule;* 1.5219—*Retention of Permit at Permitted Facility;* 1.5221—*Permitting of Numerous Similar Facilities;* 1.5222—*Permitting of Facilities at Multiple Temporary Sites;* and 1.5232—*Issuance, Revocation, and Enforcement of Permits.* Additionally, EPA is proposing to approve MCAPCO Rules 1.5217—*Confidential Information;* 1.5218—*Compliance Schedule for Previously Exempted Activities;* and 1.5220—*Applicability Determinations* into the LIP. EPA is proposing to approve these changes because they are consistent with the CAA.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. This proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9,

2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: September 9, 2021.

John Blevins,

Acting Regional Administrator, Region 4.

[FR Doc. 2021–20005 Filed 9–16–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 59

[EPA–HQ–OAR–2006–0971; FRL–7966–02–OAR]

RIN 2060–AU94

National Volatile Organic Compound Emission Standards for Aerosol Coatings Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to amend the National Volatile Organic Compound (VOC) Emission Standards for Aerosol Coatings, which establishes reactivity-based emission standards for the aerosol coatings category (aerosol spray paints) under the Clean Air Act (CAA). In this action, the EPA is proposing to update coating category product-weighted reactivity limits for aerosol coatings categories; add new compounds and reactivity factors (RFs); update existing reactivity values; revise the default RF; amend the thresholds for compounds regulated by this document; and add electronic reporting provisions.

DATES:

Comments. Comments must be received on or before November 16, 2021. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before October 18, 2021.

Public Hearing: If anyone contacts us requesting a public hearing on or before September 22, 2021, the Agency will hold a virtual public hearing. See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2006–0971, 40 Code of Federal Regulations (CFR) part 59, subpart E, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2006–0971 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2006–0971.

Instructions: All submissions received must include the Docket ID No. EPA–HQ–OAR–2006–0971 for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room closed to public visitors on March 31, 2020 to reduce the risk of transmitting COVID–19 Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. The Agency encourages the public to submit comments via *https://www.regulations.gov*/or email, as there is a temporary suspension of mail delivery to EPA, and no hand deliveries are currently accepted. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: For information about the National Volatile Organic Compound Emission Standards for Aerosol Coatings, contact Ms. J. Kaye Whitfield, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Minerals and Manufacturing Group (D243–04), Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2509; fax number (919) 541–4991; and email address: *whitfield.kaye@epa.gov.* For questions related to enforcement, contact Mr. John Cox, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, U.S. EPA WJC South Building (2221A), Pennsylvania Avenue NW, Washington, DC 20460; telephone number; (202–564–1395); and email address: *cox.john@epa.gov.* For questions regarding electronic reporting, contact Ms. Theresa Lowe, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Measurement Policy Group (D243–05), Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4786; and email address: *lowe.theresa@epa.gov.*

SUPPLEMENTARY INFORMATION:

Entities Potentially Affected by This Action. The entities potentially affected by this regulation include manufacturers, processors, wholesale distributors, or importers of aerosol coatings for sale or distribution in the United States, or manufacturers, processors, wholesale distributors, or importers who supply the entities listed above with aerosol coatings for sale or distribution in interstate commerce in the United States. The entities potentially affected by this proposed action include those listed in the North American Industry Classification System codes 32551 and 325998. This list is not intended to be exhaustive, but rather provides a guide for entities likely to be affected by this action. To determine whether you would be affected by this action, you should examine the applicable industry description in section I.E of the promulgation preamble, published at 73 FR 15604 (March 24, 2008). If you have any questions regarding the applicability of this action to a particular entity, consult the appropriate EPA contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Obtaining a copy of this document and other related information. In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/aerosol-coatings-national-volatile-organic-compound-emission.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website.

The proposed changes to the regulatory text in the CFR that would be necessary to incorporate the changes proposed in this action are set out the document titled *Proposed Regulation Edits for 40 CFR part 59, subpart E* in the docket for this action (Docket ID No.

EPA–HQ–OAR–2006–0971). This document includes the specific proposed amendatory language for revising the CFR and, for the convenience of interested parties, a redline version of the regulations. Following signature by the EPA Administrator, the EPA will also post a copy of this memorandum and the attachment to *https://www.epa.gov/stationary-sources-air-pollution/aerosol-coatings-national-volatile-organic-compound-emission.*

Participation in virtual public hearing. Please note that the EPA is deviating from its typical approach for public hearings because the President declared a national emergency. Due to the current Centers for Disease Control and Prevention (CDC) recommendations, as well as state and local orders for social distancing to limit the spread of COVID–19, the EPA cannot hold in-person public meetings at this time.

To request a virtual public hearing, contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov.* If requested, the virtual hearing will be held on October 4, 2021. The hearing will convene at 9:00 a.m. Eastern Time (ET) and will conclude at 3:00 p.m. ET. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce further details at *https://www.epa.gov/stationary-sources-air-pollution/aerosol-coatings-national-volatile-organic-compound-emission.*

Upon publication of this document in the **Federal Register**, the EPA will begin pre-registering speakers for the hearing, if a hearing is requested. To register to speak at the virtual hearing, please use the online registration form available at *https://www.epa.gov/stationary-sources-air-pollution/aerosol-coatings-national-volatile-organic-compound-emission* or contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov.* The last day to pre-register to speak at the hearing will be September 29, 2021. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers in approximate order at: *https://www.epa.gov/stationary-sources-air-pollution/aerosol-coatings-national-volatile-organic-compound-emission.*

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to *whitfield.kaye@epa.gov.* The EPA also recommends submitting the text of your oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/stationary-sources-air-pollution/aerosol-coatings-national-volatile-organic-compound-emission.* While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov* to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates. If you require the services of a translator or a special accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by September 24, 2021. The EPA may not be able to arrange accommodations without advanced notice.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2006–0971. All documents in the dockets are listed in *https://www.regulations.gov/.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. Publicly available docket materials are available either in the docket for this action, Docket ID No. EPA–HQ–OAR–2006–0971, or electronically at *https://www.regulations.gov/.*

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0971. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/.* Do not submit electronically any information that you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted by mail as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

The EPA is temporarily suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. The EPA encourages the public to submit comments via *https://www.regulations.gov/* as there may be a delay in processing mail and faxes. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from

the CDC, local area health departments, and our Federal partners so that the Agency can respond rapidly as conditions change regarding COVID–19.

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/* or email. Clearly mark the part or all the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2006–0971. Note that written comments containing CBI and submitted by mail may be delayed and no hand deliveries will be accepted.

Organization of this document. The information in this preamble is organized as follows:

I. Background

The EPA promulgated ''The National Volatile Organic Compound Emission Standards for Aerosol Coatings,'' in 2008 (73 FR 15604; March 24, 2008) and codified the action at 40 CFR part 59, subpart E (sections 59.500– 59.516). The rule established nationwide VOC reactivity-based standards for the aerosol coatings source category. The statutory authority for this action is provided by section 183(e) of the CAA, as amended (42 U.S.C. 7401 *et seq.*). Section 183(e) of the CAA requires the EPA to control VOC emissions from certain categories of consumer and commercial products for purposes of reducing VOC emissions contributing to ozone formation and nonattainment of the ozone national ambient air quality standards (NAAQS).

The EPA and states typically have promulgated rules for regulating VOCs from consumer products based upon reductions of VOC content in the products by mass. One state, California, promulgated a regulation for VOC emissions from aerosol coatings based on a relative reactivity approach. The EPA promulgated a national rule based upon the relative reactivity approach after concluding that the approach could achieve more reduction in ozone formation than may be achieved by a mass-based approach for this source category. The reactivity-based approach requires the EPA to revise the regulatory definition of VOC to include compounds that would otherwise be exempt, to account for all reactive compounds in aerosol coatings that contribute to ozone formation. Therefore, certain compounds that would not be VOC under the otherwise applicable definition for other purposes, do count towards the applicable reactivity-based limits of the aerosol coatings standards.

Regulated entities, encompassing all steps in aerosol coatings operations, include manufacturers, processors, wholesale distributors, or importers of aerosol coatings or their suppliers. There are approximately 46 regulated entities; however, two aerosol coatings companies account for about 70 percent of the U.S. market.[1]

II. What amendments have been made to the National Volatile Organic Compound Emission Standards for Aerosol Coatings Rule?

The national emission standards for aerosol coatings (74 FR 29595; June 23, 2009) has been amended several times. In accordance with section 59.511(j), the EPA responded to an industry petition and added 128 compounds, corresponding reactivity factors, and Chemical Abstract Service (CAS) numbers for each compound or class of compounds listed in Table 2A. In addition, the Agency changed the definition of VOC in part 51 to clarify that compounds that are excluded from the definition of VOC under both 40 CFR 51.100(s)(1) and (s)(5) are to be counted as VOC for the purposes of determining compliance with the aerosol coatings reactivity rule in 40 CFR part 59, subpart E. In the same action, the EPA amended section 59.511(g) to ensure that both the certifying entity and the regulated entity have full knowledge of responsibilities assumed by the certifying entity. In a later action, the EPA responded to a second petition from industry and added three new compounds, reactivity factors, and CAS numbers to Table 2A of the rule. See 77 FR 14279 (March 9, 2012).

III. Summary of Proposed Amendments to the National Volatile Organic Compound Emission Standards for Aerosol Coatings

The EPA is proposing to amend Tables 1 and 2 to subpart E of part 59, the default reactivity factor, VOC regulated by the rule, and requirements for submitting reports. The Agency is proposing these changes, in part, to respond to petitions from American Coatings Association (ACA) requesting revisions to the standards that promote consistency and uniformity, where appropriate, between California Air Resources Board (CARB) and national aerosol coatings regulations. For more information on the petitions submitted

[1] Email Conversation, American Coatings Association, March 29, 2021.

by ACA to the Agency, see the docket for this action, Docket ID No. EPA–HQ–OAR–2006–0971.

A. Table 1 to Subpart E of Part 59.—Product-Weighted Reactivity Limits by Coatings Category

The national rule establishes product-weighted reactivity limits, listed in Table 1, for each coating category. Compliance with these limits is determined by the mass weighted sum of the reactivity values of the VOC ingredients in the product. In this action, the Agency is proposing to update both the reactivity values of individual VOCs (in Table 2) and the limits for each coating category (in Table 1). These changes are intended to update the relative reactivity scale that underlies both the reactivity factors and limits; to further decrease the contribution of aerosol coatings to ozone formation; and to make the national rule consistent with the California regulation to improve ease of compliance and implementation.

When considering updates to coating categories and emission limits in Table 1, the EPA consulted with CARB and reviewed CARB's rationale [2] for changes made to California's aerosol coatings regulations since promulgation of the EPA national regulation. The Agency then met with ACA to discuss their concerns. Based on the outcome of these consultations, the Agency is proposing to adopt category names and limits identical to those in the CARB aerosol coatings regulation. The proposed amendments will increase clarity and promote consistency between California and national aerosol coatings regulations, one of the stated objectives of the ACA petition.

Accordingly, the Agency is proposing to combine two sets of coatings subcategories into two main categories and to add corresponding limits for those categories, as follows:

The subcategories ''enamel,'' ''lacquer,'' and ''clear or metallic'' coatings will be subsumed under the category heading, ''Hobby/Model/Craft Coatings,'' and the category limit will be set equal to 1.6 g O_3/g VOC. The subcategories ''clear'' and ''pigmented'' coatings will be subsumed under the category heading, ''Shellac Sealers,'' with the category limit set equal to 1.00 g O_3/g VOC.

The EPA also is proposing to add six new specialty coating categories and corresponding limits for those categories, as follows:

''Electrical/Electronic/Conformal Coatings,'' with a category limit set equal to 2.00 O_3/g VOC; ''Flexible Coatings,'' with a limit equal to 1.60 O_3/g VOC; ''Mold Release Coatings,'' with a limit equal to 1.10 O_3/g VOC; ''Rust Converter,'' with a limit equal to 1.10 O_3/g VOC; ''Two Component Coating,'' with a limit equal to 1.20 O_3/g VOC; and ''Uniform Finish Coating,'' with a limit equal to 1.30 O_3/g VOC.

For a complete list of proposed changes to Table 1, see *Proposed Regulation Edits for 40 CFR part 59, subpart E,* located in the docket for this action, EPA Docket ID No. EPA–HQ–OAR–2006–0971.

B. Table 2 to Subpart E of Part 59.—2A Reactivity Factors, 2B Aliphatic Hydrocarbon Solvent Mixtures, and 2C Aromatic Hydrocarbon Solvent Mixtures

The EPA is proposing to amend Tables 2A, 2B, and 2C by adding new compounds and RFs and updating existing reactivity values. The proposed changes will provide uniformity between CARB [3] and national aerosol coatings regulations (73 FR 15604). California uses maximum incremental reactivity (MIR) values [4] as the basis for its aerosol coatings regulations. In the national rule, the Agency uses the term ''reactivity factor'' and sets the value equal to the MIR or upper limit MIR used by CARB.

In accordance with 40 CFR part 59, subpart E, section 59.511(j), ACA submitted petitions requesting the EPA add 17 new compounds and RFs to Table 2A and update the RF of one existing compound mixture on Table 2B. The petitioners provided the chemical names, CAS numbers, a statement certifying the intent to use the compounds in aerosol coatings products, and information allowing the EPA to evaluate the reactivity of the compounds and assign RF values. Of the 17 new compound additions to Table 2A, CARB has assigned MIR values for 15 of the compounds in California's aerosol coatings regulation,[5] which the Agency is proposing to adopt in this action. The proposed RFs of the two remaining compounds are equal to 0.04 g O_3/g VOC for trans-1-chloro-3,3,3-trifluoropropene (HFO-1233zdE), CAS 102687–65–0, based on MIR values from Carter [6]; and 0.71 g O_3/g VOC for diethyl carbonate, CAS 105–58–8, based on MIR values derived by Venecek.[7]

One of the compounds being added, dipropylene glycol monomethyl ether, CAS 34590–94–8, is a mixture of isomers. The compound, 2-[2-methoxypropoxy]-1-propanol, CAS 13588–28–8, which is an isomer of dipropylene glycol monomethyl ether, is already on Table 2A. Both compounds are assigned the same RF.

In addition to adding the identified compounds, the Agency is proposing to update all of the existing reactivity factors listed in Table 2A, 2B, and 2C to align with the MIR values in the current California regulation.[8] This change is necessary to maintain the internal consistency of the relative reactivity scale and consistency with the changes proposed for the limits in Table 1.

For a complete list of proposed changes to Table 2, see *Proposed Regulation Edits for 40 CFR part 59, subpart E* in the docket for this action, EPA Docket ID No. EPA–HQ–OAR–2006–0971.

C. The Default Reactivity Factor

The ACA petition requested the EPA revise the default RF for compounds in aerosol coatings formulations that do not have an established RF listed in Table 2A to subpart E of part 59—Reactivity Factors. Consistent with the EPA's methodology for setting the default RF, if a VOC does not have an RF, then the EPA assigns the compound the maximum RF for any compound listed in the rule. See 72 FR 38952 (July 16, 2007). Therefore, the EPA is proposing to revise the default RF to 18.50 g O_3/g VOC, the highest RF in this proposed rule. Furthermore, the EPA is proposing to require that regulated entities include the name and CAS number of all VOCs that are assigned the default RF, as specified in reporting requirements.

The EPA also is proposing that, if a VOC is used in a product and is not listed in Table 2A, but its isomer is listed in Table 2A, then the RF of the isomer will be used. If more than one

[2] Proposed Amendments to the Antiperspirant and Deodorants Regulation, the Consumer Products Regulation, the Aerosol Coating Products Regulation, the Tables of MIR Values, Test Method 310, and Proposed Repeal of the Hairspray Credit Program; Date of Release: August 7, 2013, Scheduled for Consideration: September 26, 2013.

[3] Title 17, California's Regulation, Division 3, Chapter 1, Subchapter 8.5, Article 3, Aerosol Coatings Products, Sections 94520–94528 (Amended September 17, 2014).

[4] Title 17, CCR, Article 1, Tables of Maximum Incremental Reactivity Values, Sections 94700–94701 (Amended September 17, 2014).

[5] Ibid.

[6] Carter, William (2009). Investigation of Atmospheric Ozone Impacts of Trans 1-Chloro-3,3,3-Trifluoropropene, Final Report. Riverside, California: Center for Environmental Research and Technology, University of California.

[7] Venecek, Melissa (2020). Estimating Maximum Incremental Reactivity for Diethyl Carbonate. Final Report. Sacramento, California: Technical Development Section, Consumer Products and Air Quality Assessment Branch, Air Quality Planning and Science Division, California Air Resources Board.

[8] Title 17, CCR, Sections 94700–94701.

isomer of that VOC, or mixtures of the isomers of that VOC, is listed in Table 2A, then the highest RF associated with the listed isomers or isomer mixtures will be used.

D. VOC Regulated Under This Rule

In conjunction with promulgating the initial aerosol coatings regulations, the EPA amended the regulatory definition of VOC by adding 40 CFR 51.100(s)(7), which removes the exemption of specific organic compounds identified in paragraphs (s)(1) and (s)(5) from the definition of VOC for purposes of compliance with the aerosol coatings emission limits. To eliminate consideration of VOC that make *de minimis* contributions to a product's reactivity, the EPA also excluded from the applicable limits, those compounds (a) that contribute less than 0.1 percent of the product weight (regardless of their RF), and (b) that have reactivities less than ethane and comprise less than 7.3 percent of product weight. The EPA explained the basis for the derivation of the 7.3 percent threshold in the original rulemaking and its relationship to the RF for ethane and the default RF (73 FR 15604).

In this action, the EPA is proposing to retain part (a), where compounds that comprise less than 0.1 percent of the product weight are excluded from the product's mass-weighted reactivity. The EPA is proposing to eliminate part (b), the exclusion of low reactivity compounds that comprise more than 0.1 percent but less than 7.3 percent of the product weight. Eliminating this exclusion should have little impact on the ability of product formulations to comply with product-weighted reactivity limits, as the affected compounds have low RFs and contribute a small percentage of product weight. These two proposed actions, in combination, will make the EPA's national regulation consistent with the CARB aerosol coatings regulation.

When considering the elimination of VOC that make *de minimis* contributions to a product's reactivity, the Agency is soliciting comment on the proposal to retain part (a) above, where compounds that comprise less than 0.1 percent of the product weight are excluded from the product's mass-weighted reactivity, and eliminate part (b), the exclusion of low reactivity compounds that comprise more than 0.1 percent but less than 7.3 percent of the product weight.

E. Electronic Reporting of Notifications and Reports

The EPA is proposing to revise the existing aerosol coatings rule to require that regulated entities submit electronic copies of required notifications and reports in template format through the EPA's Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI), instead of the current hard copy submission requirement. A description of the electronic data submission process is provided in the memorandum *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* available in the docket for this action. For the nine notification and reports, (Temporary Variances, Initial Notification, Change to Information in Initial Notification, Response to Written Notification, Exemption Claim Initial Notification, Exemption Claim Annual Report, Notice of Certifying Entity to Maintain Records, Notice Rescinding Certification and Triennial Report), the proposed rule requires that regulated entities use the appropriate spreadsheet template to submit information to CEDRI. A draft version of the proposed spreadsheet template for these notifications and reports is included in the docket. The EPA specifically requests comment on the content, layout, and overall design of the spreadsheet template, which can be found in the docket, EPA Docket ID No. EPA–HQ–OAR–2006–0971 and posted online at *https://www.epa.gov/stationary-sources-air-pollution/aerosol-coatings-national-volatile-organic-compound-emission.*

Additionally, the EPA has identified two broad circumstances in which it may provide extensions of the electronic reporting deadlines. These circumstances are (1) outages of the EPA's CDX or CEDRI which preclude a regulated entity from accessing the system and submitting required reports, and (2) *force majeure* events, which are defined as events that will be or have been caused by circumstances beyond the control of the regulated entity from complying with the requirement to submit a report electronically by the applicable deadline. Examples of *force majeure* events are acts of nature, acts of war or terrorism, or equipment failure or safety hazards beyond the control of the regulated entity. The EPA is providing these potential extensions to protect regulated entities from noncompliance in cases where they cannot successfully submit a report by the reporting deadline for reasons outside of their control. In both circumstances, the decision to accept the claim of needing additional time to report is within the discretion of the Administrator, and reporting should occur as soon as possible.

The electronic submittal of the reports addressed in this proposed rulemaking will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the environment, will improve compliance by facilitating the ability of regulated entities to demonstrate compliance with requirements and by facilitating the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance, and will ultimately reduce burden on regulated entities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public. Moreover, electronic reporting is consistent with the EPA's plan [9] to implement Executive Order 13563 and is in keeping with the EPA's agency-wide policy [10] developed in response to the White House's Digital Government Strategy.[11] For more information on the benefits of electronic reporting, see the memorandum titled, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules,* referenced earlier in this section.

F. Test Methods

Although the EPA is proposing no new technical standards in this action, the Agency is soliciting comment on whether to amend this rule to require the use of the updated versions of the two existing test methods currently identified in the rule: CARB Method 310, ''Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products,'' updated May 25, 2018; and ASTM D523–89 (1999), ''Standard Test

[9] Improving Our Regulations: Final Plan for Periodic Retrospective Reviews, August 2011. Available at:, *https://www.regulations.gov/search?filter=EPA-HQ-OA-2011-0156-0154.*

[10] E-Reporting Policy Statement for the EPA Regulations, September 2013. Available at: *https://www.epa.gov/sites/production/files/2016-03/documents/epa-ereporting-policy-statement-2013-09-30.pdf.*

[11] Digital Government: Building a 21st Century Platform to Better Serve the American People, May 2012. Available at: *https://www.regulations.gov/document/EPA-HQ-OAR-2010-0682-0755* or *https://obamawhitehouse.archives.gov/sites/default/files/omb/egov/digital-government/digital-government.html.*

Method for Specular Gloss,'' currently named ASTM Method D523–14 (2018), updated May 1, 2018.

IV. Summary of Impacts

This section presents a summary of the impacts expected as a result of this proposed rule.

A. Environmental Impacts

There are no anticipated environmental impacts from compliance with this proposed rule. The proposed revisions are minor and not expected to result in net changes to an aerosol coating product's potential to form ozone because the overall average changes to the values used to measure reactivity, *i.e.,* category emission limits and reactivity factors, are small compared to the values in the original rule. The proposed action is, however, expected to improve upon the original rule by ensuring updates are made (*e.g.,* adds new compounds, updates reactivity factors, and adds electronic reporting) that promote consistency and uniformity between state and national regulations. As such, this proposed action would maintain the level of environmental protection to populations in affected ozone nonattainment areas without having any disproportionately high and adverse human health or environmental effects on any populations, including any minority or low-income populations.

B. Energy Impacts

There are no adverse energy impacts anticipated from compliance with this proposed rule.

C. Cost and Economic Impacts

There are no adverse economic impacts anticipated from compliance with this proposed rule. This action primarily updates reactivity tables and factors and adds electronic reporting provisions.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a ''significant regulatory action'' and was, therefore, not submitted to OMB for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0617. There is no increase in burden associated with this action because the rule primarily adds compounds and reactivity factors, updates category limits and reactivity factors, and adds electronic reporting provisions. The burden associated with the proposed change from paper to electronic reporting would not change as a result of this action, at least in the short term, because regulated entities will need time to become familiar with the new reporting scheme and template. In the long term, the Agency anticipates that electronic reporting, which is more efficient than paper reporting, would reduce the burden as regulated entities become more familiar with the electronic reporting process. The EPA expects the decrease in burden estimates resulting from electronic reporting would be reflected in future updates to the ICR for this rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule will not impose any requirements on small entities. The EPA has determined that small businesses will not incur any adverse impacts because the Agency is taking this action to amend the aerosol coatings rule primarily by updating coating categories in Table 1 and adding compounds to Table 2 of the rule and adding an electronic reporting provision. These amendments do not create any new requirements or burdens, and no costs are associated with these amendments. The Agency has, therefore, concluded that this proposed rule will not pose any additional regulatory burden for all affected small entities.

The EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It 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.

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

This action does not have tribal implications as specified in Executive Order 13175. The proposed regulatory action does not have a substantial direct effect on one or more Indian tribes, in that this action imposes no regulatory burdens on tribes. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern increase in an adverse or environmental health risk or safety risk that disproportionately affects children.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

The rule involves technical standards; however, no new technical standards are being proposed in this action.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes federal executive policy on environmental justice.

As stated in section VI of the preamble of this action, there are no anticipated adverse environmental impacts and no adverse economic impacts anticipated from compliance with this rule. As stated in section I of this action, section 183(e) of the CAA requires the control of VOC emissions from certain categories of consumer and commercial products for purposes of reducing VOC emissions contributing to ozone formation and nonattainment of the ozone NAAQS. The health and environmental risks associated with ozone were considered in the establishment of the ozone NAAQS. The level is designed to be protective of the public with an adequate margin of safety. Accordingly, these actions would help increase the level of environmental protection to populations in affected ozone nonattainment areas without having any disproportionately high and adverse human health or environmental effects on any populations, including any minority or low-income populations.

Michael S. Regan,

Administrator.

[FR Doc. 2021–19896 Filed 9–16–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket Nos. 21–190 and 20–105; Report No. 3182; FR ID 46762]

Petitions for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration.

SUMMARY: Petitions for Reconsideration (Petitions) have been filed in the Commission's rulemaking proceeding by Ms. Elisabeth Neasmith, on behalf of Telesat Canada, David Goldman, on behalf of Space Exploration Holdings, LLC, Nickolas G. Spina, on behalf of Kepler Communications Inc., and by Eric Graham, on behalf of WorldVu Satellites Limited (d/b/a OneWeb) (NGSO Satellite Coalition).

DATES: Oppositions to the Petitions must be filed on or before October 4, 2021. Replies to oppositions must be filed on or before October 12, 2021.

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

FOR FURTHER INFORMATION CONTACT: Regina Brown, Attorney-Advisor, Financial Operations, Office of the Managing Director, (202) 418–0792 or via email at *regina.brown@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3182, released September 1, 2021. The full text of the Petitions can be accessed online via the Commission's Electronic Comment Filing System at: *https://apps.fcc.gov/ecfs/.* The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. 801(a)(1)(A), because no rules are being adopted by the Commission.

Subject: *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2021, MD Docket No. 21–190; Assessment and Collection of Regulatory Fees for Fiscal Year 2020, MD Docket No. 20–105,* Report and Order and Notice of Proposed Rulemaking, 86 FR 26677, May 17, 2021. This document is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 2.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–20143 Filed 9–16–21; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2021–0106; FF09E21000 FXES11110900000212]

Endangered and Threatened Wildlife and Plants; 90-Day Finding for Two Petitions To List the Gray Wolf in the Western United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of petition findings and initiation of status reviews.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to add the gray wolf *(Canis lupus)* in the Northern Rocky Mountains and a petition to add the gray wolf in western North America to the List of Endangered and Threatened Wildlife under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petitions present substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, with the publication of this document, we announce that we plan to initiate a status review to determine whether the petitioned actions are warranted. To ensure that the status review is comprehensive, we are requesting scientific and commercial data and other information regarding the species and factors that may affect its status. Based on the status review, we will issue a 12-month petition finding, which will address whether or not the petitioned actions are warranted, in accordance with the Act.

DATES: The findings announced in this document were made on September 17, 2021. As we commence our status review, we seek any new information concerning the status of, or threats to, the gray wolf, or its habitats in the Northern Rocky Mountains and/or Western United States. Any information we receive during the course of our status review will be considered.

ADDRESSES:

Supporting documents: A summary of the basis for the petition findings contained in this document is available on *http://www.regulations.gov* in Docket No. FWS–HQ–ES–2021–0106. In addition, this supporting information is available by contacting the person specified in **FOR FURTHER INFORMATION CONTACT**.

Status reviews: If you have new scientific or commercial data or other information concerning the status of, or threats to, the gray wolf or its habitats in the Northern Rocky Mountains and/or Western United States, please provide those data or information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter the docket number presented above in the document headings. For best results, do not copy this number from this document but instead type it into the Search box using hyphens. Then, click on the ''Search'' button. After finding the correct document, you may submit information by clicking on ''Comment.'' If your information will fit

in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our information review procedures. If you attach your information as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–HQ–ES–2021–0106, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send information only by the methods described above. We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us.

FOR FURTHER INFORMATION CONTACT: Marjorie Nelson, Division Manager, Ecological Services Mountain-Prairie Region, 720–582–3524, *marjorie_nelson@fws.gov.* If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations in title 50 of the Code of Federal Regulations (50 CFR part 424) set forth the procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants (Lists) in 50 CFR part 17. Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to add a species to the Lists (*i.e.,* ''list'' a species), remove a species from the Lists (*i.e.,* ''delist'' a species), or change a listed species' status from endangered to threatened or from threatened to endangered (*i.e.,* ''reclassify'' a species) presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish the finding promptly in the **Federal Register**.

Our regulations establish that substantial scientific or commercial information with regard to a 90-day petition finding refers to credible scientific or commercial information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted (50 CFR 424.14(h)(1)(i)).

A species may be determined to be an endangered species or a threatened species because of one or more of the five factors described in section 4(a)(1) of the Act (16 U.S.C. 1533(a)(1)). The five factors are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A);

(b) Overutilization for commercial, recreational, scientific, or educational purposes (Factor B);

(c) Disease or predation (Factor C);

(d) The inadequacy of existing regulatory mechanisms (Factor D); and

(e) Other natural or manmade factors affecting its continued existence (Factor E).

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to, or are reasonably likely to, affect individuals of a species negatively. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition, or the action or condition itself. However, the mere identification of any threat(s) may not be sufficient to compel a finding that the information in the petition is substantial information indicating that the petitioned action may be warranted. The information presented in the petition must include evidence sufficient to suggest that these threats may be affecting the species to the point that the species may meet the definition of an endangered species or threatened species under the Act.

If we find that a petition presents such information, our subsequent status review will evaluate all identified threats by considering the individual-, population-, and species-level effects and the expected response by the species. We will evaluate individual threats and their expected effects on the species, then analyze the cumulative effect of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that are expected to have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts that may ameliorate threats. It is only after conducting this cumulative analysis of threats and the actions that may ameliorate them, and the expected effect on the species now and in the foreseeable future, that we can determine whether the species meets the definition of an endangered species or threatened species under the Act. If we find that a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, the Act requires that we promptly commence a review of the status of the species, and we will subsequently complete a status review in accordance with our prioritization methodology for 12-month findings (81 FR 49248; July 27, 2016).

Summary of Petition Findings

Evaluation of Two Petitions To List the Gray Wolf in the Western United States

Both petitions request listing of a distinct population segment (DPS) for the gray wolf. The gray wolf *(Canis lupus)* is a recognized species by the Integrated Taxonomic Information System.

Species and Range: Gray wolf in the western United States.

Historical range: Western United States, except Southwest.

Current range: CA, CO, ID, MT, OR, WA, WY.

The petitions include two alternative DPSs for listing the gray wolf in a portion of its range that encompasses the Northern Rocky Mountains and excludes the range of the listed Mexican gray wolf *(C. l. baileyi):* (1) The Northern Rocky Mountains DPS, or (2) a Western DPS.

Petition History

On June 1, 2021, we received a petition (dated May 26, 2021) from Center for Biological Diversity, the Humane Society of the United States, Humane Society Legislative Fund, and the Sierra Club requesting that the gray wolf in the Northern Rocky Mountains be emergency listed as a threatened species or an endangered species under the Act (first petition). The Act does not provide for a process to petition emergency listing; therefore, we are evaluating this petition under the normal process of determining if it presents substantial scientific or commercial information indicating that the petitioned action may be warranted.

On July 29, 2021, we received a new petition (dated July 29, 2021) from Western Watersheds Project and 70 other organizations requesting that the gray wolf in western North America be listed as an endangered species under the Act (second petition). On August 10, 2021, we received an addendum (dated August 9, 2021) to the second petition. Both petitions clearly identified themselves as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses both petitions.

Evaluation of Information Summary and Finding

We reviewed the petitions, sources cited in the petitions, and other readily available information. We considered the factors under section 4(a)(1) and assessed the effect that the threats identified within the factors—as may be ameliorated or exacerbated by any existing regulatory mechanisms or conservation efforts—may have on the species now and in the foreseeable future. Based on our review of the petitions and readily available information regarding human-caused mortality, we find that the petitioners present credible and substantial information that human-caused mortality (Factor B) may be a potential threat to the species in Idaho and Montana. These two States include approximately 75 percent of gray wolves in a potential Northern Rocky Mountains or Western DPS. The petitioners also provide credible and substantial information that new regulations in these two States may be inadequate to address this potential threat (Factor D). Therefore, we find that the petitions present substantial information indicating that the petitioned action may be warranted in a Northern Rocky Mountains or Western DPS. The petitioners also presented information suggesting that habitat modification due to a reduced prey base (Factor A), disease (Factor C), and loss of genetic diversity caused by isolation and small population size (Factor E) may be threats to the gray wolf. We will fully evaluate these and all other potential threats, as well as the validity of each DPS, in detail based on the best scientific and commercial data available when we conduct the status assessment and make the 12-month finding.

The basis for our finding on these petitions, and other information regarding our review of the petitions, can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–HQ–ES–2021–0106 under the Supporting Documents section.

Conclusion

On the basis of our evaluation of the information presented in the petitions under sections 4(b)(3)(A) and 4(b)(3)(D)(i) of the Act, we have determined that the petitions summarized above for the gray wolf present substantial scientific or commercial information indicating that the petitioned actions may be warranted. We are, therefore, initiating a status review of the species to determine whether the actions are warranted under the Act. At the conclusion of the status review, we will issue a finding, in accordance with section 4(b)(3)(B) of the Act, as to whether the petitioned actions are not warranted, warranted, or warranted but precluded by pending proposals to determine whether any species is an endangered species or a threatened species.

Authors

The primary authors of this document are staff members of the Ecological Services Program, U.S. Fish and Wildlife Service.

Authority

The authority for these actions is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Gary Frazer,

Assistant Director, Ecological Services, U.S. Fish and Wildlife Service.

[FR Doc. 2021–20088 Filed 9–16–21; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 86, No. 178
Friday, September 17, 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

Submission for OMB Review; Comment Request

September 14, 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 required 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 particular 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.

Farm Service Agency

Title: 7 CFR 766, Direct Loan Servicing—Special.

OMB Control Number: 0560–0233.

Summary of Collection: The Farm Service Agency's (FSA) Farm Loan Programs provide loans to family farmers to purchase real estate and equipment and finance agricultural production. The regulation in the 7 CFR 766, Direct Loan Servicing—Special provides the requirements for servicing financially distressed and delinquent direct loan borrowers. The loan servicing options include disaster set-aside, primary loan servicing (including reamortization, rescheduling, deferral, write down and conservation contracts), buyout at market value, and homestead protection. FSA also services borrowers who file bankruptcy or liquidate security when available servicing options are not sufficient to produce a feasible plan. The information collections contained in the regulation are necessary to evaluate a borrower's request for consideration of the special servicing actions.

Need and Use of the Information: Information collections are submitted by FLP direct loan borrowers to the local FSA office serving the country in which their business is headquartered. The information is necessary to provide supervised credit and authorized servicing actions to financially distressed and delinquent direct borrowers as legislatively mandated. If the information were not collected, or collected less frequently, FSA would be unable to meet the mandated mission of its loan program required by Congress.

Description of Respondents: Individuals or households; Business or other for-profit; Farms.

Number of Respondents: 17,174.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 12,221.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–20096 Filed 9–16–21; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket No. RUS–21–SFH–0007]

Notice of Request for Revision of a Currently Approved Information Collection; Comments Requested

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by November 16, 2021.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Management Analyst, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, Room 4227, South Building, Washington, DC 20250–1522. Telephone: (202)720–2825. Email *arlette.mussington@usda.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for revision.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) The accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) Ways to enhance the quality, utility and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection

techniques or other forms of information technology.

Comments may be sent by the Federal eRulemaking Portal: Go to *https://www.regulations.gov* and, in the ''Search'' box, type in the Docket No. RUS–21–SFH–0007. A link to the Notice will appear. You may submit a comment here by selecting the ''Comment'' button or you can access the ''Docket'' tab, select the ''Notice,'' and go to the ''Browse & Comment on Documents'' Tab. Here you may view comments that have been submitted as well as submit a comment. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link at the bottom. Comments on this information collection must be received by November 16, 2021.

Title: Substantially Underserved Trust Areas.

OMB Control Number: 0572–0147.

Expiration Date of Approval: February 28, 2022.

Type of Request: Revision of a currently approved information collection.

Abstract: The RUS provides loan, loan guarantee, and grant programs for rural electric, water and waste, and telecommunications and broadband infrastructure. The SUTA initiative gives the Secretary of Agriculture certain discretionary authorities relating to financial assistance terms and conditions that can enhance the financing possibilities in areas that are underserved by certain RUS electric, water and waste, and telecommunications and broadband programs.

The Water and Environmental Programs (WEP), division of RUS, provides low-income communities that face significant health risks, access to safe, reliable drinking water and waste disposal facilities services. Safe drinking water and sanitary waste disposal systems are vital not only to public health, but also to the economic vitality of rural America. Rural Development is a leader in helping rural America improve the quality of life and increase the economic opportunities for rural people. Under 7 CFR 1777, Section 306C, WEP provides funding for the construction of water and waste facilities in rural communities and is proud to be the only Federal program exclusively focused on rural water and waste infrastructure needs of rural communities with populations of 10,000 or less. WEP also provides funding to organizations that provide technical assistance and training to rural communities in relation to their water and waste activities, and is administered through National Office staff in Washington, DC, and a network of field staff in each State.

The Electric Program makes insured loans and loan guarantees to nonprofit and cooperative associations, public bodies, and other utilities. Insured loans primarily finance the construction of electric distribution facilities in rural areas. The guaranteed loan program has been expanded and is now available to finance generation, transmission, and distribution facilities. The loans and loan guarantees finance the construction of electric distribution, transmission, and generation facilities, including system improvements and replacement required to furnish and improve electric service in rural areas, as well as demand side management, energy conservation programs, and on-grid and off-grid renewable energy systems. The loans and loan guarantees finance the construction of electric distribution, transmission, and generation facilities, including system improvements and replacement required to furnish and improve electric service in rural areas, as well as demand side management, energy efficiency and conservation programs, and on-grid and off-grid renewable energy systems. Loans are made to cooperatives as well as to corporations, states, territories and subdivisions and agencies such as municipalities, people's utility districts, and nonprofit, limited-dividend, or mutual associations that provide retail electric service needs to rural areas or supply the power needs of distribution borrowers in rural areas.

The Telecom Program provides funding for the deployment of rural telecommunications infrastructure. Funding includes loans and loan guarantees as well as grants to eligible for-profit and non-profit entities, tribes, municipalities, and cooperatives. Investments in tribal and economically, disadvantaged areas are typically encouraged. Funds are available through several different programs to help rural communities extend access where broadband service is least likely to be commercially available. Each program has different applicant and project eligibility requirements and program objectives. Once funds are awarded, Rural Development monitors the projects to make sure they are completed, meet all program requirements, and are making efficient use of federal resources. The Telecom Program maintains staff of General Field Representatives (GFRs) locally for any technically assistance will be required nationwide. GFRs are an integral part of our outreach delivery system. GFRs meet regularly with awardees at the awardee's locations. GFRs serve as the local information resources for the awardees and headquarters staff. They keep awardees current on issues that profoundly impact their business.

The data covered by this collection of information are those materials necessary to allow the agency to determine applicant and community eligibility and an explanation and documentation of the high need for the benefits of the SUTA provisions. Program specific application materials, which funds are being applied for, are covered by the information collection package for the specific RUS program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 hours per response.

Estimated Number of Respondents: 2.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 60.

Copies of this information collection can be obtained from Arlette Mussington, Innovation Center—Regulations Management Division, at (202) 720–2825. Email: *arlette.mussington@usda.gov*.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2021–20104 Filed 9–16–21; 8:45 am]

BILLING CODE P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

TIME AND DATE: October 29, 2021, 1:00 p.m. EDT (1.5 hours).

PLACE: The public meeting will be held virtually via ZOOM. The access information will be provided by email to registrants. Registration is required via the below link: *https://www.zoomgov.com/meeting/register/vJItc-ypqTsiE8fNj3oJkd2CwJ4RonSFLig*. After registering, you will receive a confirmation email containing information about joining the meeting.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Chemical Safety and Hazard Investigation Board (CSB) will convene a public meeting on Friday, October 29, 2021, at 1:00 p.m. EDT. This meeting serves to fulfill its quarterly October

public meeting requirement. The Board will review the CSB's progress in meeting its mission and highlight safety products newly released through investigations and safety recommendations.

CONTACT PERSON FOR FURTHER INFORMATION: Hillary Cohen, Communications Manager, at *public@csb.gov* or (202) 446–8094. Further information about this public meeting can be found on the CSB website at: *www.csb.gov.*

ADDITIONAL INFORMATION:

Background

The CSB is an independent federal agency charged with investigating incidents and hazards that result, or may result, in the catastrophic release of extremely hazardous substances. The agency's Board Members are appointed by the President and confirmed by the Senate. CSB investigations look into all aspects of chemical accidents and hazards, including physical causes such as equipment failure as well as inadequacies in regulations, industry standards, and safety management systems.

Public Participation

The meeting is free and open to the public. This meeting will only be available via ZOOM. Close captions (CC) will be provided.

To submit public comments for the record please email us at *public@csb.gov.* Public comments sent in advance may be addressed at the meeting.

Dated: September 14, 2021.

Tamara Qureshi,

Assistant General Counsel, Chemical Safety and Hazard Investigation Board.

[FR Doc. 2021–20292 Filed 9–15–21; 4:15 pm]

BILLING CODE 6350–01–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

TIME AND DATE: September 24, 2021, 1:00 p.m. EDT (4 hours).

PLACE: The public meeting will be held virtually via ZOOM. The access information will be provided by email to registrants. Registration is required via the below link: *https://www.zoomgov.com/meeting/register/vJItdOqpqjkuEhyI9WTTEDzJN1ztNBx0rGg.* After registering, you will receive a confirmation email containing information about joining the meeting.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Chemical Safety and Hazard Investigation Board (CSB) announces that it will convene a public meeting to release two final investigation reports. The first report details the investigation into a fatal incident on May 3, 2019. The incident occurred when a flammable vapor cloud found an ignition source and ignited, causing an explosion and fire. The flammable vapor originated from the area where AB Specialty was making a silicon hydride emulsion. The release fatally injured four employees and seriously injured another employee. This facility is operated by AB Specialty Silicones, LLC (AB Specialty).

The second report details the investigation into a fatal incident on September 21, 2020, at the Evergreen Packaging paper mill in Canton, North Carolina. The incident occurred when an electric heat gun fell into a bucket of flammable resin, igniting a fire. The incident occurred inside a process vessel that was a permit-required confined space. The fire spread to a connected process vessel and fatally injured two contract workers.

CSB staff will present its final reports with corresponding findings and recommendations. Staff presentations are preliminary and are intended to allow the Board to consider in a public forum the issues and factors involved in this case.

To submit public comments for the record please email us at *public@csb.gov.* Public comments sent in advance may be addressed at the meeting.

CONTACT PERSON FOR FURTHER INFORMATION: Hillary Cohen, Communications Manager, at *public@csb.gov* or (202) 446–8094. Further information about this public meeting can be found on the CSB website at: *www.csb.gov.*

ADDITIONAL INFORMATION:

Background

The CSB is an independent federal agency charged with investigating incidents and hazards that result, or may result, in the catastrophic release of extremely hazardous substances. The agency's Board Members are appointed by the President and confirmed by the Senate. CSB investigations look into all aspects of chemical accidents and hazards, including physical causes such as equipment failure as well as inadequacies in regulations, industry standards, and safety management systems.

Public Participation

The meeting is free and open to the public. This meeting will only be available via ZOOM. Close captions (CC) will be provided.

Dated: September 14, 2021

Tamara Qureshi,

Assistant General Counsel, Chemical Safety and Hazard Investigation Board.

[FR Doc. 2021–20291 Filed 9–15–21; 4:15 pm]

BILLING CODE 6350–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Arkansas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Arkansas Advisory Committee (Committee) will hold a virtual (online) meeting Friday, October 1, 2021 at 1:00 p.m. Central Time. The purpose of the meeting is for the Committee to discuss civil rights concerns related to IDEA compliance and implementation in Arkansas schools.

DATES: The meeting will be held on Friday, October 1, 2021 at 1 p.m. Central time.

ADDRESSES:

Web Access (audio/visual): Register at: *https://bit.ly/3hinWx2.*

Phone Access (audio only): 800–360–9505, Access Code 2760 759 9224.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, Designated Federal Officer, at *mwojnaroski@usccr.gov* or (202) 618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may join online or listen to this discussion through the above call-in number. 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. 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 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 Melissa Wojnaroski at *mwojnaroski@usccr.gov.*

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, Arkansas 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

I. Welcome & Roll Call
III. Committee Discussion: IDEA Compliance and Implementation in Arkansas Schools
IV. Next Steps
V. Public Comment
VI. Adjournment

Dated: September 14, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–20181 Filed 9–16–21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New York Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the New York Advisory Committee (Committee) will hold meetings via WebEx on the following Fridays from 1:00–2:15 p.m. ET: October 1, October 15, 2021 and October 29, 2021, for the purpose of continuing to debrief testimony heard related to the Committee's project on potential racial discrimination in eviction policies and enforcement in New York.

DATES: The meetings will be held the following Fridays from 1:00–2:15 p.m.: October 1, October 15, and October 29, 2021.

ADDRESSES: Access details for these meetings:

- To join by web conference please click the link below; password is USCCR: *https://bit.ly/3mcmZtw*
- To join by phone only, dial: 1–800–360–9505; Access Code: 199 963 9326#

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, DFO, at *mtrachtenberg@usccr.gov* or 202–809–9618.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference operator will ask callers to identify themselves, the organizations they are affiliated with (if any), and an email address prior to placing callers into the conference call. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number. To request additional accommodations, please email *mtrachtenberg@usccr.gov* at least 7 days prior to the meeting for which accommodations are requested.

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 Mallory Trachtenberg at *mtrachtenberg@usccr.gov* in the Regional Programs Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Programs Unit at 202–809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at *www.facadatase.gov* under the Commission on Civil Rights, New York Advisory Committee. Persons interested in the work of this Committee are also directed to the Commission's website, *www.usccr.gov;* persons may also contact the Regional Programs Unit office at the above email or phone number.

Agenda

I. Welcome and Roll Call
II. Announcements and Updates
III. Approval of Minutes
IV. Debrief: Committee's Project on Eviction Policy and Enforcement in New York
V. Public Comment
VI. Review Next Steps
VII. Adjournment

Dated: September 13, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–20074 Filed 9–16–21; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Delaware Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that the Delaware Advisory Committee to the Commission will hold virtual meetings on Wednesday, October 6, 2021; Wednesday, November 3, 2021; and Wednesday, December 1, 2021, from 1:00 p.m.–2:00 p.m. (ET). The purpose of the meetings is for project planning pre and post briefings on the topic of COVID 19 and health disparities.

DATES: These meetings will be held from 1:00 p.m. to 2:00 p.m. (ET) on 10/6/21, 11/3/21, and 12/1/21. The access information for all three meetings is the same:

- To join by web conference:
- To join by phone only, dial 1–800–360–9505; Access code: 199 118 9479.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: These meetings are available to the public through the Webex links above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges.

Individuals who are deaf, deafblind and hard of hearing. may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided for each meeting.

Members of the public are entitled to make comments during the open period at the end of each meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Mallory Trachtenberg at

mtrachtenberg@usccr.gov. Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618.

Records and documents discussed during the meeting will be available for public viewing as they become available at *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Wednesdays at 1:00 p.m. (ET): Oct. 6, Nov. 3, and Dec. 1, 2021.

I. Welcome and Roll Call
II. Project Planning
III. Other Business
IV. Next Planning Meeting
V. Public Comments
VI. Adjourn

Dated: September 14, 2021.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2021–20182 Filed 9–16–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Performance Review Board Membership

AGENCY: Office of the Under Secretary for Economic Affairs, Department of Commerce.

ACTION: Notice.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the Office of the Under Secretary for Economic Affairs (OUSEA) announces the appointment of members who will serve on the OUSEA Performance Review Board (PRB). The PRB is responsible for reviewing the appraisals and ratings recommended by the senior employees' supervisors and written responses from the senior employee, if any, as well as any other reviews requested, to ensure that recommended ratings are supported and appropriate in the OUSEA, Bureau of Economic Analysis and the U.S. Census Bureau. The PRB provides recommendations to the Appointing Authority regarding the objectives and operation of the SES and ST performance appraisal and reward systems, as required. The purpose of the PRB is to provide fair and impartial review of senior executive service and senior professional performance ratings, bonus and pay adjustment recommendations and Presidential Rank Award nominations. The term of each PRB member will expire on December 31, 2023.

DATES: *Effective Date:* The effective date of service of appointees to the OUSEA Performance Review Board is based upon publication of this notice.

SUPPLEMENTARY INFORMATION: The names and position titles of the members of the PRB are set forth below:

John M. Abowd, Associate Director for Research and Methodology, Census Bureau
Liani Balasuriya, Director, Executive Secretariat, Office of the Secretary
Mary E. Bohman, Acting Director, BEA
Rona Bunn, Chief Information Officer, International Trade Administration
Luis J. Cano, Chief Information Officer, Census Bureau
Gregory Capella, Deputy Director, National Technical Information Service
Christopher Day, Deputy Assistant Secretary for Legislative and Intergovernmental Affairs, Office of the Secretary
Paul Farello, Associate Director for International Economics, BEA
Albert Fontenot, Jr., Associate Director for Decennial Census, Census Bureau
Laura K. Furgione, Chief Administrative Officer, Census Bureau
Thomas F. Howells III, Associate Director for Industry Accounts, BEA
Kathleen James, Chief Administrative Officer, BEA
Ron Jarmin, Acting Director, Census Bureau
Christa D. Jones, Chief of Staff, Census Bureau
Edith J. McCloud, Associate Director for Management, Minority Business Development Agency
Timothy Olson, Associate Director for Field Operations, Census Bureau
Nick Orsini, Associate Director for Economic Programs, Census Bureau
Benjamin J. Page, Chief Financial Officer, Census Bureau
Jeremy Pelter, Deputy Under Secretary, Bureau of Industry and Security
Erich Strassner, Associate Director for National Economic Accounts, BEA
Stephanie Sykes, Director of Intergovernmental Affairs, Office of the Secretary
Victoria Velkoff, Associate Director for Demographic Programs, Census Bureau
David R. Ziaya, Chief, Office of Program, Performance and Stakeholder Performance, and Stakeholder Integration, Census Bureau

FOR FURTHER INFORMATION CONTACT: Angela Jones-Wilson, SES Program Manager, Executive Resources Office, Human Resources Division, Census Bureau, 4600 Silver Hill Road, Washington, DC 20233, 301–763–6302.

Ron S. Jarmin,

Acting Director, Census Bureau Performing the Non-exclusive Functions and Duties of the Under Secretary for Economic Affairs, Chair, OUS/EA Performance Review Board.

[FR Doc. 2021–20124 Filed 9–16–21; 8:45 am]

BILLING CODE 3510–BS–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Request for Nominations for the Bureau of Economic Analysis Advisory Committee

AGENCY: Bureau of Economic Analysis, U.S. Department of Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Director of the Bureau of Economic Analysis (BEA) requests nominations of individuals to the Bureau of Economic Analysis Advisory Committee (BEAAC). The Director will consider nominations received in response to this notice, as well as from other sources.

DATES: Please submit nominations by October 15, 2021. The Bureau of Economic Analysis will retain nominations received after this date for consideration should additional vacancies occur.

ADDRESSES: Please submit nominations by email to *Gianna.Marrone@bea.gov* (subject line ''BEAAC Nominations'').

FOR FURTHER INFORMATION CONTACT: Gianna Marrone, Committee Management Official, Department of Commerce, Bureau of Economic Analysis, telephone 301–278–9282, email: *Gianna.Marrone@bea.gov.*

SUPPLEMENTARY INFORMATION: The Committee was established September 2, 1999. The Committee advises the Director of BEA on matters related to the development and improvement of BEA's national, regional, industry, and international economic accounts, with a focus on new and rapidly growing areas of the U.S. economy. The Committee provides recommendations from the perspectives of the economics profession, business, and government.

Objectives and Scope of BEAAC Activities

The Committee provides advice and comments on current and proposed BEA projects from the perspective of a broad range of highly knowledgeable users of economic statistics. This is the most effective means of obtaining valuable feedback on new data products and improvements to BEA's existing statistics. The credibility of BEA's economic statistics is enhanced by the endorsement of this prestigious committee.

Description of the BEAAC Member Duties

The Committee functions solely as an advisory committee to the Director of BEA. The Committee will function

solely as an advisory body, in accordance with FACA, to advise BEA on topics selected by BEA in consultation with the Committee chairperson.

The Committee meets once or twice a year, budget permitting. Additional meetings may be held as deemed necessary by the Director or the Designated Federal Official. All Committee meetings are open to the public in accordance with the Federal Advisory Committee Act.

Members shall not reference or otherwise utilize their membership on the Committee in connection with public statements made in their personal capacities without a disclaimer that the views expressed are their own and do not represent the views of the Committee, BEA, or the Department of Commerce.

BEAAC Membership

The Committee will consist of approximately 15 members who are appointed by and serve at the discretion of the Director of BEA. The Committee chairperson will be selected by the Director of BEA. Members will be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance. Committee members will be from business, academia, research, government, and international organizations, and they must be acknowledged experts in relevant fields, such as economics, statistics, and economic accounting.

The Committee aims to have a balanced representation among its members, considering such factors as geography, age, sex, race, ethnicity, technical expertise, community involvement, and knowledge of BEA programs and/or activities. Individuals will be selected based on their expertise in or representation of specific areas as needed by the BEA.

Committee members will be considered ''special government employees'' (SGEs) and, therefore, will be subject to the ethical standards applicable to SGEs.

Committee members will serve for a term up to three years. All members will be reevaluated at the conclusion of the term with the prospect of renewal for an additional term. Active attendance and participation in meetings and activities (*e.g.,* conference calls and assignments) will be factors considered when determining term renewal or membership continuance. Members may be appointed for no more than three consecutive terms. Appointments may be for one, two, or three years to provide staggered terms.

Compensation for Members

Committee members shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 *et seq*. Because Committee members will not have access to classified information, no security clearances are required.

Solicitation of Nominations

The Committee is currently filling one or more positions on the BEAAC.

The Director will consider nominations of all qualified individuals to ensure that the Committee includes the areas of experience noted above. Individuals may nominate themselves or other individuals, and professional associations and organizations may nominate one or more qualified persons for membership on the Committee. Nominations shall state that the nominee is willing to serve as a member and carry out the duties of the Committee. A nomination package should include the following information for each nominee:

1. A letter of nomination stating the name, affiliation, and contact information for the nominee, the basis for the nomination (*i.e.,* what specific attributes recommend him/her for service in this capacity), and the nominee's field(s) of experience;

2. A biographical sketch of the nominee and a copy of his/her curriculum vitae; and

3. The name, return address, email address, and daytime telephone number at which the nominator can be contacted.

The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse BEAAC membership.

All nomination information should be provided in a single, complete package by midnight on October 15, 2021. Interested applicants should send their nomination package to Gianna Marrone, Committee Management Official, at *Gianna.Marrone@bea.gov* (subject line ''BEAAC Nominations''). The Bureau of Economic Analysis will retain nominations received after this date for consideration should additional vacancies occur.

Dated: September 14, 2021.

Gianna Marrone,

Bureau of Economic Analysis, Assistant Designated Federal Official, Bureau of Economic Analysis Advisory Committee.

[FR Doc. 2021–20139 Filed 9–16–21; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[8/17/2021 through 9/7/2021]

Firm name	Firm address	Date accepted for investigation	Product(s)
ImPress Systems, Inc	7 Stuart Road, Chelmsford, MA 01824	8/19/2021	The firm manufactures foil printing machines.
HED Cycling Products, Inc	1735 Terrace Drive, Roseville, MN 655113.	8/20/2021	The firm manufactures bicycle components.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE—Continued

[8/17/2021 through 9/7/2021]

Firm name	Firm address	Date accepted for investigation	Product(s)
Rose Electronics Distributing Company, LLC.	2030 Ringwood Avenue, San Jose, CA 95131.	8/24/2021	The firm manufactures batteries.
RoMan Manufacturing, Inc	861 47th Street Southwest, Wyoming, MI 49509.	8/30/2021	The firm manufactures electrical equipment.
Positive Connection, Inc	374 Central Avenue, Taneyville, MO 65759.	9/2/2021	The firm manufactures wire harnesses for electrical circuits.
Chateau Bianca, Inc	17485 Highway 22, Dallas, OR 97338	9/7/2021	The firm produces wine.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.8 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Bryan Borlik,

Director.

[FR Doc. 2021–20180 Filed 9–16–21; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–124, C–570–125]

Certain Vertical Shaft Engines Between 99cc and up to 225cc, and Parts Thereof, From the People's Republic of China: Initiation of Anti-Circumvention Inquiry of Antidumping and Countervailing Duty Orders—60cc up to 99cc Engines

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to allegations of circumvention from Briggs & Stratton, LLC, the Department of Commerce (Commerce) is initiating an anti-circumvention inquiry to determine whether imports of small vertical shaft engines with displacements between 60cc and up to 99cc (60cc up to 99cc engines) from the People's Republic of China (China) are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on certain vertical shaft engines between 99cc and up to 225cc, and parts thereof (small vertical engines) from China.

DATES: Effective September 17, 2021.

FOR FURTHER INFORMATION CONTACT: Benjamin Luberda or Paul Litwin, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2185 and (202) 482–6002, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 30, 2021, Briggs & Stratton, LLC, the petitioner in the AD and CVD investigations, requested that Commerce initiate anti-circumvention inquiries with regard to 60cc up to 99cc engines that are exported to the United States from China.[1] The petitioner alleges that 60cc up to 99cc engines constitute merchandise altered in form or appearance in such minor respects that it should be included within the scope of the *Orders*[2] pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.225(i). In addition, the petitioner alleges that 60cc up to 99cc engines are later-developed merchandise and should be included within the scope of the *Orders* pursuant to section 781(d) of the Act and 19 CFR 351.225(j). On August 27, 2021, MTD Products Inc. (MTD), an original equipment manufacturer (OEM) and importer, submitted comments requesting that Commerce reject the petitioner's request to initiate an anti-circumvention inquiry.[3] On September 3, 2021, the petitioner submitted comments on MTD's request to decline initiating an anti-circumvention inquiry.[4]

Scope of the Orders

The products subject to these *Orders* are small vertical engines from China. For a complete description of the scope of the *Orders, see* the appendix.

Merchandise Subject to the Anti-Circumvention Inquiry

This anti-circumvention inquiry covers small vertical shaft engines with displacements between 60cc and up to 99cc produced in China and exported to the United States.

Legal Framework

Section 781(c) of the Act provides that Commerce may find circumvention of an AD or CVD order when merchandise of the same class or kind as merchandise has been ''altered in form or appearance in minor respects . . . whether or not included in the same tariff classification.'' Section 781(c)(2) of the Act provides an exception that ''{p}aragraph 1 shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the {order}.''

While the Act is silent as to what factors to consider in determining whether alterations are properly considered ''minor,'' the legislative history of this provision indicates that there are certain factors that should be considered before reaching a circumvention determination. In conducting a circumvention inquiry

[1] *See* Petitioner's Letter, ''Certain Vertical Shaft Engines Between 99cc and 225cc, and Parts Thereof from China/Request for Anti-Circumvention Inquiries Pursuant to Section 781(c) and/or 781(d) of the Tariff Act of 1930,'' dated July 30, 2021 (Circumvention Allegation).

[2] *See Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof from the People's Republic of China: Antidumping and Countervailing Duty Orders,* 86 FR 23675 (May 4, 2021) (*Orders*).

[3] *See* MTD's Letter, ''Request to Reject Anti-Circumvention Inquiry Request,'' dated August 27, 2021.

[4] *See* Petitioner's Letter, ''Comments on Request to Reject Anti-Circumvention Inquiry Request,'' dated September 3, 2021.

under section 781(c) of the Act, Commerce has generally relied upon ''such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.'' [5] Concerning the allegation of minor alteration under section 781(c) of the Act and 19 CFR 351.225(i), Commerce examines such factors as: (1) Overall physical characteristics; (2) expectations of ultimate users; (3) use of merchandise; (4) channels of marketing; and (5) cost of any modification relative to the value of the imported products.[6]

Section 781(d) of the Act provides that Commerce may initiate an anti-circumvention inquiry to determine whether merchandise developed after an AD or CVD investigation is within the scope of the order(s). In conducting later-developed merchandise inquiries under section 781(d)(1) of the Act, Commerce will evaluate whether: (1) The general physical characteristics of the merchandise subject to the inquiry are the same as subject merchandise covered by the order(s); (2) the expectations of the ultimate purchasers of the merchandise subject to the inquiry are no different to the expectations of the ultimate purchasers of subject merchandise; (3) the ultimate use of the inquiry merchandise and subject merchandise are the same; (4) the channels of trade of both products are the same; and (5) there are any differences in the advertisement and display of both products.[7] First, however, Commerce applies a commercial availability test to determine whether the merchandise subject to the inquiry was commercially available at the time of the investigation(s) (*i.e.,* the product was present in the commercial market or the product was tested and ready for commercial production).[8]

[5] *See Carbon and Certain Alloy Steel Wire Rod from Mexico: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order,* 83 FR 5405 (February 7, 2018) (citing S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987)).

[6] *Id.;* and *Deacero S.A. de C.V.* v. *United States,* 817 F.3d 1332 (Fed. Cir. 2016)

[7] *See* section 781(d)(1) of the Act.

[8] *See Later-Developed Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order,* 71 FR 32033, 32035 (June 2, 2006), unchanged in *Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 71 FR 59075 (October 6, 2006).

Analysis

After analyzing the record evidence and the petitioner's allegation, we determine that there is sufficient information to warrant the initiation of a minor alterations anti-circumvention inquiry, pursuant to section 781(c) of the Act and 19 CFR 351.225(i). However, we determine that initiation of a later-developed merchandise anti-circumvention inquiry, pursuant to section 781(d) of the Act and 19 CFR 351.225(j), is not warranted. For a full discussion of the basis for our decision to initiate a minor alterations anti-circumvention inquiry, but not a later-developed merchandise anti-circumvention inquiry, *see* the Initiation Decision Memorandum.[9] The Initiation Decision Memorandum is a public document, on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Initiation Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.*

Conclusion

Commerce will determine whether the merchandise subject to the inquiry (as described in the ''Merchandise Subject to the Anti-Circumvention Inquiry'' section above) is circumventing the *Orders* such that it should be included within the scope of the *Orders,* pursuant to section 781(c) of the Act and 19 CFR 351.225(i).

In accordance with 19 CFR 351.225(l)(2), if Commerce issues a preliminary affirmative determination, we will then instruct U.S. Customs and Border Protection to suspend liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the merchandise at issue entered or withdrawn from warehouse for consumption on or after the date of initiation of the inquiry.

Commerce will establish a schedule for questionnaires and comments on the issues related to the inquiry. In accordance with section 781(f) of the Act, to the maximum extent practicable, Commerce intends to issue its final determination within 300 days of the date of publication of this initiation.

[9] *See* ''Decision Memorandum for Initiation of Anti-Circumvention Inquiry,'' dated concurrently with and hereby adopted by this notice (Initiation Decision Memorandum).

Notification to Interested Parties

This notice is published in accordance with sections 781(c) of the Act and 19 CFR 351.225(i).

Dated: September 13, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Orders

The merchandise covered by these orders consists of spark-ignited, non-road, vertical shaft engines, whether finished or unfinished, whether assembled or unassembled, whether mounted or unmounted, primarily for walk-behind lawn mowers. Engines meeting this physical description may also be for other non-hand-held outdoor power equipment, including but not limited to, pressure washers. The subject engines are spark ignition, single-cylinder, air cooled, internal combustion engines with vertical power take off shafts with a minimum displacement of 99 cubic centimeters (cc) and a maximum displacement of up to, but not including, 225cc. Typically, engines with displacements of this size generate gross power of between 1.95 kilowatts (kw) to 4.75 kw.

Engines covered by this scope normally must comply with and be certified under Environmental Protection Agency (EPA) air pollution controls title 40, chapter I, subchapter U, part 1054 of the Code of Federal Regulations standards for small non-road spark-ignition engines and equipment. Engines that otherwise meet the physical description of the scope but are not certified under 40 CFR part 1054 and are not certified under other parts of subchapter U of the EPA air pollution controls are not excluded from the scope of this proceeding. Engines that may be certified under both 40 CFR part 1054 as well as other parts of subchapter U remain subject to the scope of this proceeding.

Certain small vertical shaft engines, whether or not mounted on non-hand-held outdoor power equipment, including but not limited to walk-behind lawn mowers and pressure washers, are included in the scope. However, if a subject engine is imported mounted on such equipment, only the engine is covered by the scope. Subject merchandise includes certain small vertical shaft engines produced in the subject country whether mounted on outdoor power equipment in the subject country or in a third country. Subject engines are covered whether or not they are accompanied by other parts.

For purposes of these orders, an unfinished engine covers at a minimum a sub-assembly comprised of, but not limited to, the following components: Crankcase, crankshaft, camshaft, piston(s), and connecting rod(s). Importation of these components together, whether assembled or unassembled, and whether or not accompanied by additional components such as a sump, carburetor spacer, cylinder head(s), valve train, or valve cover(s), constitutes an unfinished engine for purposes of these orders. The inclusion of other products such as spark plugs fitted into the

cylinder head or electrical devices (*e.g.,* ignition coils) for synchronizing with the engine to supply tension current does not remove the product from the scope. The inclusion of any other components not identified as comprising the unfinished engine subassembly in a third country does not remove the engine from the scope.

Specifically excluded from the scope of these orders are ''Commercial'' or ''Heavy Commercial'' engines under 40 CFR 1054.107 and 1054.135 that have (1) a displacement of 160 cc or greater, (2) a cast iron cylinder liner, (3) an automatic compression release, and (4) a muffler with at least three chambers and volume greater than 400 cc.

The engines subject to these orders are predominantly classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 8407.90.1010. The engine subassemblies that are subject to this investigation enter under HTSUS 8409.91.9990. The mounted engines that are subject to this investigation enter under HTSUS 8433.11.0050, 8433.11.0060, and 8424.30.9000. Engines subject to this investigation may also enter under HTSUS 8407.90.1020, 8407.90.9040, and 8407.90.9060. The HTSUS subheadings are provided for convenience and customs purposes only, and the written description of the merchandise is dispositive.

[FR Doc. 2021–20170 Filed 9–16–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Domestic and International Client Export Services and Customized Forms Renewal

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on July 6, 2021, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: International Trade Administration, U.S. Commercial Service, Commerce.

Title: Domestic and International Client Export Services and Customized Forms.

OMB Control Number: 0625–0143.

Form Number(s): ITA–4096P.

Type of Request: Renewal submission (extension of a current information collection).

Number of Respondents: 200,000.

Average Hours per Response: 10 minutes.

Burden Hours: 33,333 (annual).

Needs and Uses: The International Trade Administration's (ITA) U.S. Commercial Service (CS) is mandated by Congress to broaden and deepen the U.S. exporter base. The CS accomplishes this by providing counseling, programs, and services to help U.S. organizations export and conduct business in overseas markets. This information collection package enables the CS to provide appropriate export services to U.S. exporters and international buyers.

The Commercial Service (CS) offers a variety of services to enable clients to begin exporting/importing or to expand existing exporting/importing efforts. Clients may learn about our services from business related entities such as the National Association of Manufacturers, Federal Express, State Economic Development offices, the internet or word of mouth. The CS provides a standard set of services to assist clients with identifying potential overseas partners, establishing meeting programs with appropriate overseas business contacts, and providing due diligence reports on potential overseas business partners. The CS also provides other export-related services considered to be of a ''customized nature'' because they do not fit into the standard set of CS export services but are driven by unique business needs of individual clients.

The dissemination of international market information and potential business opportunities for U.S. exporters are critical components of the Commercial Service's export assistance programs and services. U.S. companies conveniently access and indicate their interest in these services by completing the appropriate forms via ITA and CS U.S. Export Assistance Center websites.

The CS works closely with clients to educate them about the exporting/importing process and to help prepare them for exporting/importing. When a client is ready to begin the exporting/importing process our field staff provide counseling to assist in the development of an exporting strategy. We provide fee-based, export-related services designed to help client export/import. The type of export-related service that is proposed to a client depends upon a client's business goals and where they are in the export/import process. Some clients are at the beginning of the export process and require assistance with identifying potential distributors, whereas other clients may be ready to sign a contract with a potential distributor and require due diligence assistance.

Before the CS can provide export-related services to clients, such as assistance with identifying potential partners or providing due diligence, specific information is required to determine the client's business objectives and needs. For example, before we can provide a service to identify potential business partners, we need to know whether the client would like a potential partner to have specific technical qualifications, coverage in a specific market, English or foreign language ability or warehousing requirements. This information collection is designed to elicit such data so that appropriate services can be proposed and conducted to most effectively meet the client's exporting goals. Without these forms the CS is unable to provide services when requested by clients.

The forms ask U.S. exporters standard questions about their company details, export experience, information about the products or services they wish to export and exporting goals. A few questions are tailored to a specific program type and will vary slightly with each program. CS staff use this information to gain an understanding of client's needs and objectives so that they can provide appropriate and effective export assistance tailored to an exporter's particular requirements.

Affected Public: Business or other for-profit organizations; Not-for-profit institutions; State, Local, or Tribal government; and Federal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Public Law 15 U.S.C. *et seq.* and 15 U.S.C. 171 *et seq.*

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and

entering either the title of the collection or the OMB Control Number 0625–0143.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–20063 Filed 9–16–21; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

Advisory Committee on Supply Chain Competitiveness: Notice of Public Meetings

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed topics of discussion for the upcoming public meeting of the Advisory Committee on Supply Chain Competitiveness (Committee).

DATES: The meeting will be held on October 21, 2021, from 10:00 a.m. to 4:00 p.m., Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held via Webex.

FOR FURTHER INFORMATION CONTACT: Richard Boll, Office of Supply Chain, Professional & Business Services (OSCPBS), International Trade Administration. Phone: 202–384–8539. Email: *richard.boll@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Committee was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.). It provides advice to the Secretary of Commerce on the necessary elements of a comprehensive policy approach to supply chain competitiveness and on regulatory policies and programs and investment priorities that affect the competitiveness of U.S. supply chains. For more information about the Committee visit: *https://www.trade.gov/acscc.*

Matters To Be Considered: Committee members are expected to continue discussing the major competitiveness-related topics raised at the previous Committee meetings, including supply chain resilience and congestion; trade and competitiveness; freight movement and policy; trade innovation; regulatory issues; finance and infrastructure; and workforce development. The Committee's subcommittees will report on the status of their work regarding these topics. The agenda may change to accommodate other Committee business. The Office of Supply Chain, Professional & Business Services will post the final detailed agenda on its website, *https://www.trade.gov/acscc,* at least one week prior to the meeting.

The meeting is open to the public and press on a first-come, first-served basis. Space is limited. Please contact Richard Boll, at *richard.boll@trade.gov,* for participation information.

Interested parties may submit written comments to the Committee at any time before and after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of this meeting should email them to *richard.boll@trade.gov.*

For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EST on October 14, 2021. Comments received after October 14, 2021, will be distributed to the Committee, but may not be considered at the meeting. The minutes of the meeting will be posted on the Committee website within 60 days of the meeting.

Dated: September 14, 2021.

Heather Sykes,

Director, Office of Supply Chain, Professional, and Business Services.

[FR Doc. 2021–20106 Filed 9–16–21; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–602, A–588–602, A–583–605, A–549–807, A–570–814]

Certain Carbon Steel Butt-Weld Pipe Fittings From Brazil, Japan, Taiwan, Thailand, and the People's Republic of China: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of these expedited sunset reviews, the Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on certain carbon steel butt-weld pipe fittings (CSBW pipe fittings) from Brazil, Japan, Taiwan, Thailand, and the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping as indicated in the ''Final Results of Sunset Reviews'' section of this notice.

DATES: Applicable September 17, 2021.

FOR FURTHER INFORMATION CONTACT: Claudia Cott or Minoo Hatten, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4270 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2021, Commerce published the notice of initiation of the sunset reviews of the AD orders on CSBW pipe fittings from Brazil, Japan, Taiwan, Thailand, and China [1] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] In accordance with 19 CFR 351.218(d)(1)(i) and (ii), Commerce received notices of intent to participate in these sunset reviews from the domestic interested parties within 15 days after the date of publication of the *Initiation Notice.*[3] The domestic

[1] *See Antidumping Duty Order; Certain Carbon Steel Butt-Weld Pipe Fittings from Brazil,* 51 FR 45152 (December 17, 1986); *see also Antidumping Duty Order: Certain Carbon Steel Butt-Weld Pipe Fittings from Japan,* 52 FR 4167 (February 10, 1987); *Antidumping Duty Order; Certain Carbon Steel Butt-Weld Pipe Fittings from Taiwan,* 51 FR 45152 (December 17, 1986); *Antidumping Duty Order; Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand,* 57 FR 29702 (July 6, 1992); and *Antidumping Duty Order and Amendment to the Final Determination of Sales at Less Than Fair Value; Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China,* 57 FR 29702 (July 6, 1992) (collectively, *AD Orders*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 86 FR 35071 (July 1, 2021) (*Initiation Notice*).

[3] The domestic interested parties are comprised of four domestic producers of carbon steel butt-weld pipe fittings: Tube Forgings of America, Inc., Mills Iron Works, Inc., Hackney Ladish, Inc. (a subsidiary of Precision Castparts Corp.), and Weldbend Corporation (collectively, domestic interested parties). *See* Domestic Interested Parties' Letters, ''Certain Carbon Steel Butt-Weld Pipe Fittings from Brazil: Notice of Intent to Participate in the Fifth Five-Year (Sunset) Review of the Antidumping Order,'' dated July 7, 2021; and ''Carbon Steel Butt-Weld Pipe Fittings from Brazil: Notice of Intent to Participate by Weldbend Corporation,'' dated July 9, 2021; ''Certain Carbon Steel Butt-Weld Pipe Fittings from Japan: Notice of Intent to Participate in the Fifth Five-Year (Sunset) Review of the Antidumping Order,'' dated July 7, 2021; and ''Carbon Steel Butt-Weld Pipe Fittings from Japan: Notice of Intent to Participate by Weldbend Corporation,'' dated July 9, 2021; ''Certain Carbon Steel Butt-Weld Pipe Fittings from Taiwan: Notice of Intent to Participate in the Fifth Five-Year (Sunset) Review of the Antidumping Order,'' dated July 7, 2021; and ''Carbon Steel Butt-Weld Pipe Fittings from Taiwan: Notice of Intent to Participate by Weldbend Corporation,'' dated July 9, 2021; ''Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand: Notice of Intent to Participate in the Fifth Five-Year (Sunset) Review of the Antidumping Order,'' dated July 7, 2021; and ''Carbon Steel Butt-Weld Pipe Fittings from Thailand: Notice of Intent to Participate by Weldbend Corporation,'' dated July 9, 2021; ''Certain Carbon Steel Butt-Weld Pipe Fittings from The People's Republic of China:

Continued

interested parties claimed interested party status under section 771(9)(C) of the Act.

Commerce received adequate substantive responses to the *Initiation Notice* from the domestic interested parties within the 30-day period specified in 19 CFR 351.218(d)(3)(i).[4] Commerce received no substantive responses from any respondent interested parties. In accordance with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted expedited, *i.e.,* 120-day, sunset reviews of the *AD Orders.*

Scope of the Orders

The merchandise subject to the *AD Orders* consists of certain carbon steel butt-weld type fittings, other than couplings, under 14 inches in diameter, whether finished or unfinished. These imports are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheading is provided for convenience and customs purposes. A full description of the scopes of the *AD Orders* is contained in the Issues and Decision Memorandum.[5] The written descriptions are dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the Issues and Decision Memorandum, including the likelihood of continuation or recurrence of dumping in the event of revocation and the magnitude of dumping margins likely to prevail if the order was revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in the Issues and Decision Memorandum, which is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be found at *http://enforcement.trade.gov/frn/index.html.*

Final Results of Sunset Reviews

Pursuant to sections 751(c) and 752(c) of the Act, Commerce determines that revocation of the *AD Orders* would be likely to lead to continuation or recurrence of dumping and that the magnitude of the margins of dumping likely to prevail would be weighted-average margins up to the following percentages:

Country	Weighted-average margin (percent)
Brazil	52.25
Japan	65.81
Taiwan	87.30
Thailand	52.60
China	182.90

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing these final results and notice 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

I. Summary
II. Background
III. Scope of the Orders
IV. History of the Orders
V. Legal Framework
VI. Discussion of the Issues
VII. Final Results of Expedited Sunset Reviews
VIII. Recommendation

[FR Doc. 2021–20102 Filed 9–16–21; 8:45 am]

BILLING CODE 3510–DS–P

Notice of Intent to Participate in the Fifth Five-Year (Sunset) Review of the Antidumping Order,'' dated July 7, 2021; and ''Carbon Steel Butt-Weld Pipe Fittings from China: Notice of Intent to Participate by Weldbend Corporation,'' dated July 9, 2021.

[4] *See* Domestic Interested Parties' Letters, ''Carbon Steel Butt-Weld Pipe Fittings from Brazil: Substantive Response of Domestic Interested Party,'' dated July 21, 2021; and ''2021 Sunset Review: Carbon Steel Butt-Weld Pipe Fittings from Brazil: Substantive Response of Domestic Interested Parties,'' dated July 27, 2021; *see also* ''Carbon Steel Butt-Weld Pipe Fittings from Japan: Substantive Response of Domestic Interested Party,'' dated July 21, 2021; and ''2021 Sunset Review: Carbon Steel Butt-Weld Pipe Fittings from Japan: Substantive Response of Domestic Interested Parties,'' dated July 27, 2021; ''Carbon Steel Butt-Weld Pipe Fittings from Taiwan: Substantive Response of Domestic Interested Party,'' dated July 21, 2021; and ''2021 Sunset Review: Carbon Steel Butt-Weld Pipe Fittings from Taiwan: Substantive Response of Domestic Interested Parties,'' dated July 27, 2021; ''Carbon Steel Butt-Weld Pipe Fittings from Thailand: Substantive Response of Domestic Interested Party,'' dated July 21, 2021; and ''2021 Sunset Review: Carbon Steel Butt-Weld Pipe Fittings from Thailand: Substantive Response of Domestic Interested Parties,'' dated July 27, 2021; and ''Carbon Steel Butt-Weld Pipe Fittings from China: Substantive Response of Domestic Interested Party,'' dated July 2, 2021; and ''2021 Sunset Review: Carbon Steel Butt-Weld Pipe Fittings from China: Substantive Response of Domestic Interested Parties,'' dated July 27, 2021.

[5] *See* Memorandum, ''Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on Certain Carbon Steel Butt-Weld Pipe Fittings from Brazil, Japan, Taiwan, Thailand, and the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB407]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 74 Stock Identification (ID) Webinar IV for Gulf of Mexico red snapper.

SUMMARY: The SEDAR 74 assessment of Gulf of Mexico red snapper will consist of a Data workshop, a series of assessment webinars, and a Review workshop, and. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 74 Stock ID Webinar IV will be held from 2 p.m. to 4 p.m. Eastern on October 6, 2021. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Stock ID webinars are as follows:

- Participants will use review genetic studies, growth patterns, existing stock definitions, prior SEDAR stock ID recommendations, and any other relevant information on scamp stock structure.
- Participants will make recommendations on biological stock structure and define the unit stock or stocks to be addressed through this assessment.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the SEDAR office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: September 14, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–20174 Filed 9–16–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB429]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice; public hearings and webinar.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold eight in-person public hearings and one webinar to solicit public comments on Coastal Migratory Pelagics (CMP) Amendment 32—Modifications to the Gulf of Mexico Migratory Group Cobia Catch Limits, Possession Limits, Size Limits, and Framework Procedure.

DATES: The public hearings will take place October 4–25, 2021. The in-person public hearings and webinar will begin at 6 p.m. and will conclude no later than 9 p.m., local time. For specific dates and times, see **SUPPLEMENTARY INFORMATION**. Written public comments must be received on or before 5 p.m. EDT on Tuesday, October 19, 2021.

ADDRESSES: Please visit the Gulf Council website at *www.gulfcouncil.org* for meeting materials and webinar registration information. Please note, in-person attendees will be expected to follow any current COVID–19 safety protocols as determined by the Council, hotel and each city. Such precautions will include wearing masks in the meeting room, room capacity restrictions, and/or social distancing. Masks may be removed while giving public testimony. If you prefer to ''listen in'', you may access the log-on information by visiting our website at *www.gulfcouncil.org.*

Meeting addresses: The public hearings will be held in Orange Beach, AL; Destin, Madeira Beach, Ft. Myers, FL; Baton Rouge, LA; Gulfport, MS; Galveston and Corpus Christi, TX; and one virtual. For specific locations, see **SUPPLEMENTARY INFORMATION**.

Public comments: Comments may be submitted online through the Council's public portal by visiting *www.gulfcouncil.org* and clicking on ''CONTACT US''.

FOR FURTHER INFORMATION CONTACT: Emily Muehlstein; Public Information Officer; *emily.muehlstein@gulfcouncil.org,* Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The agenda for the following eight in-person public hearings and one webinar is as follows: Council staff will brief the public on the purpose and need of the amendment. The Council is currently considering modifications to the Gulf of Mexico Migratory Group *Cobia* Catch Limits, Possession Limits, Size Limits, and Framework Procedure.

Staff and a Council member will be available to answer any questions, and the public will have the opportunity to provide testimony on the amendment and other related testimony.

In-Person Locations and Webinar:

Monday, October 4, 2021; Destin Community Center, 100 Stahlman Avenue, Destin, FL 32541; (850) 654–5184.

Tuesday, October 5, 2021; Holiday Inn Gulfport-Airport Hotel, 9515 Highway 49, Gulfport, MS 39503; (228) 679–1700.

Wednesday, October 6, 2021; Omni Bayfront, 900 North Shoreline Boulevard, Corpus Christi, TX 78401, (361) 887–1600.

Thursday, October 7, 2021; Hilton Galveston Island, 5400 Seawall Boulevard, Galveston, TX 77551; (409) 744–5000.

Wednesday, October 13, 2021; The City Centre at City Hall, 300 Municipal Dr., Madeira Beach, FL 33708; (727) 391–9951.

Thursday, October 14, 2021; Crowne Plaza Baton Rouge, 4728 Constitution

Avenue, Baton Rouge, LA 70808; (225) 925–2244.

Monday, October 18, 2021; Crowne Plaza Ft. Myers at Bell Tower Shops, 13051 Bell Tower Drive, Ft. Myers, FL 33907; telephone: (239) 482–2900.

Tuesday, October 19, 2021; via webinar. Visit *www.gulfcouncil.org* website and click on the ''meetings'' tab for registration information. After registering, you will receive a confirmation email containing information about joining the webinar.

Monday, October 25, 2021; Perdido Beach Resort, 27200 Perdido Beach Resort Boulevard, Orange Beach, AL 36561; (251) 981–9811.

Special Accommodations

In-person meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira (see **ADDRESSES**), at least 5 working days prior to the meeting date.

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

Dated: September 14, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–20176 Filed 9–16–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB425]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Coastal Pelagic Species Management Team will hold two public meetings.

DATES: The meetings will be held Monday, October 4, 2021, from 10 a.m. to 4 p.m. Pacific Daylight Time or until business for the day has been completed, and Thursday October 14, 2021, from 10 a.m. to 4 p.m. Pacific Daylight Time or until business for the day has been completed.

ADDRESSES: These meetings will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Staff Officer, Pacific Council; telephone: (503) 820–2409.

SUPPLEMENTARY INFORMATION: The primary purpose of these online meetings is to discuss and potentially develop work products for the Pacific Council's November meeting. Topics will include Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) revisions to remove the Active and Monitored management categories, Stock Assessment Prioritization planning, and the CPS Stock Assessment and Fishery Evaluation (SAFE) document. Other items on the Pacific Council's November agenda may be discussed as well. Meeting agendas will be available on the Pacific Council's website in advance of the meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*; (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: September 14, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–20130 Filed 9–16–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB399]

Fisheries of the U.S. Caribbean; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 80 Indices Topical Working Group Webinar II for U.S. Caribbean queen triggerfish.

SUMMARY: The SEDAR 80 stock assessment of U.S. Caribbean queen triggerfish will consist of a series of webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 80 Indices Topical Working Group Webinar II will be held from 2 p.m. to 4 p.m. Eastern, October 7, 2021. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are

appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the webinar are as follows:

- Participants will discuss and make recommendations regarding what indices data may be included in the assessment of U.S. Caribbean queen triggerfish.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the SEDAR office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: September 14, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–20173 Filed 9–16–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB422]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Ecosystem and Ocean Planning (EOP) Committee will hold a meeting.

DATES: The meeting will be held on Monday, October 4, 2021, starting at 10 a.m. and continue through 12 p.m. See **SUPPLEMENTARY INFORMATION** for agenda details.

ADDRESSES: The meeting will take place over webinar using the Webex platform with a telephone-only connection option. Details on how to connect to the webinar by computer and by telephone will be available at: *http://www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for the EOP Committee to review and provide feedback on an exempted fishing permit (EFP) application for an experimental purse seine fishery in federal waters for Atlantic thread herring. Thread herring are an ecosystem component species under the Council's Unmanaged Forage Omnibus Amendment and are subject to a 1,700 pound possession limit. The application requested the ability to catch up to 3,000 MT (6.6 million pounds) of thread herring in 2022 and would require an exemption to the Unmanaged Forage possession limit. The EOP Committee will consider input and recommendations developed by the Council's Scientific and Statistical Committee (SSC) at their September meeting regarding the EFP application and proposed data collection program. A summary of the SSC and EOP Committee meetings will be provided to the full Council at their October meeting.

A detailed agenda and background documents will be made available on the Council's website (*www.mafmc.org*) prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: September 13, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–20086 Filed 9–16–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB424]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of informational webinars.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will host informational webinars on behalf of NOAA Fisheries regarding the implementation of the Southeast For-Hire Integrated Electronic Reporting Program.

DATES: The Council will host two For-Hire Vessel Monitoring System Requirements informational webinars on October 7, 2021, from 10 a.m. to 11:30 a.m. EDT and on October 12, 2021, from 6 p.m. until 7:30 p.m. EDT.

ADDRESSES: The meetings will be held via webinar.

FOR FURTHER INFORMATION CONTACT: Emily Muehlstein, Public Information Officer, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Council, on behalf of NOAA Fisheries, will host informational webinars regarding the upcoming implementation of vessel monitoring system (VMS) requirements for the Southeast For-Hire Integrated Electronic Reporting Program. Requirements for Gulf of Mexico federal charter/headboat permit holders are anticipated to become effective December 13, 2021. The informational webinars will provide an

overview of regulations, allow vendors to present available, approved VMS units, and provide opportunities for participants to ask questions about the program and VMS units.

The webinars are open to the public. Registration is required. Additional information, including links to registration is available at: *https://gulfcouncil.org/public-hearings-scoping-workshops/*.

The end times specified for these webinars are subject to change.

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

Dated: September 14, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–20175 Filed 9–16–21; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete product(s) and service(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments must be received on or before:* October 17, 2021.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
7530–01–600–7627—Monthly Desk Planner, Dated 2020, Wire Bound, Non-refillable, Black Cover
7530–01–600–7612—Weekly Planner Book, Dated 2020, 5″ x 8″, Black
7510–01–600–7571—Wall Calendar, Dated 2020, Wire Bound w/hanger, 15.5″ x 22″
7510–01–600–7577—Monthly Wall Calendar, Dated 2020, Jan–Dec, 8½″ x 11″
7510–01–600–8024—Dated 2020 12-Month 2-Sided Laminated Wall Planner, 24″ x 37″
Designated Source of Supply: Chicago Lighthouse Industries, Chicago, IL
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s): 7520–01–587–9645—Pen, Ballpoint, Retractable, Hybrid Ink, 6 Pack, Blue, Medium Point
Designated Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s): 6840–00–551–8346—Disinfectant, Detergent, General Use, BioBased, Concentrate, 60% Pine Oil, 55 Gallon Drum
Designated Source of Supply: The Lighthouse for the Blind, St. Louis, MO
Contracting Activity: GSA/FSS GREATER SOUTHWEST ACQUISITI, FORT WORTH, TX

NSN(s)—Product Name(s): 6520–00–890–2080—Dental Kit, Adult
Designated Source of Supply: North Jersey Friendship House, Inc., Hackensack, NJ
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):
6520–01–063–7477—Floss, Dental, Waxed, 100 Yards
6520–01–063–7478—Floss, Dental, Waxed, 200 Yards
Designated Source of Supply: North Jersey Friendship House, Inc., Hackensack, NJ
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s): 8530–00–080–6341—Toothbrush, Adult, 6″
Designated Source of Supply: North Jersey Friendship House, Inc., Hackensack, NJ
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

Service(s)

Service Type: Laundry Service
Mandatory for: Virginia Army National Guard, Central Issue Facility, Defense Supply Center Richmond, Warehouse 15, Richmond, VA, 8000 Jefferson Davis Hwy., Richmond, VA
Designated Source of Supply: Louise W. Eggleston Center, Inc., Norfolk, VA
Contracting Activity: DEPT OF THE ARMY, W7N5 USPFO ACTIVITY VA ARNG

Service Type: Operations and Maintenance Services
Mandatory for: FAA, William J. Hughes Technical Center, Atlantic City International Airport, Atlantic City, NJ, Building 300, Fourth Floor, Atlantic City, NJ
Designated Source of Supply: Fedcap Rehabilitation Services, Inc., New York, NY
Contracting Activity: FEDERAL AVIATION ADMINISTRATION, DEPT OF TRANS/FEDERAL AVIATION ADMIN

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2021–20133 Filed 9–16–21; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2021–HQ–0004]

Submission for OMB Review; Comment Request

AGENCY: Department of the Air Force, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by 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: Department of Defense National Defense Science and Engineering Graduate (NDSEG) Fellowships Program; OMB Control Number 0701–0154.

Type of Request: Regular.

Number of Respondents: 3,577.

Responses per Respondent: 1.

Annual Responses: 3,577.

Average Burden per Response: 12 hours.

Annual Burden Hours: 42,924 hours.

Needs and Uses: The National Defense Science and Engineering (S&E) Graduate (NDSEG) Fellowships program provides 3-year fellowships to students enrolled in Ph.D. programs of interest to DoD. Awards are under the authority of 10 U.S.C. 2191. The request for applications is necessary to screen applicants and to evaluate and select students to award fellowships.

Information is used by the American Society for Engineering Education (ASEE), the contractor selected to administer the program, to down-select the eligible applicants by means of a peer review panel. The information is also used by scientists of the Air Force, Army, and Navy, to make the final selection of awardees.

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 13, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–20142 Filed 9–16–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Early Engagement Opportunity: Implementation of Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: DoD announces an early engagement opportunity to support DoD implementation planning for an Executive Order titled ''Ensuring Adequate COVID Safety Protocols for Federal Contractors.''

DATES: Early inputs should be submitted in writing via the Defense Acquisition Regulations System (DARS) website shown in the **ADDRESSES** section. Comments can be received up to 30 days after the date of this notice, but comments will be most useful if received by DoD within 7 days after the date of this notice. The website will be updated when early inputs will no longer be accepted.

ADDRESSES: Submit early inputs via the DARS website at *https://www.acq.osd.mil/dpap/dars/early_engagement.html* or via email to *osd.dfars@mail.mil* and reference ''Early Engagement Opportunity: E.O. 14042'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, 571–372–6093.

SUPPLEMENTARY INFORMATION: DoD is providing an opportunity for the public to provide early inputs on the Department's implementation of Executive Order (E.O.) 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors. The public is invited to submit early inputs on E.O. 14042 via the DARS website at *https://www.acq.osd.mil/dpap/dars/early_engagement.html.* Comments can be received up to 30 days after the date of this notice, but comments will be most useful if received by DoD within 7 days after the date of this notice. The website will be updated when early inputs will no longer be accepted. Please note, this venture does not replace or circumvent the rulemaking process.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2021–20189 Filed 9–16–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2021–OS–0073]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by 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: DoD Child Development Program (CDP)—Criminal History; DD Form 2981; OMB Control Number 0704–0516.

Type of Request: Extension.

Number of Respondents: 8,000.

Responses per Respondent: 1.

Annual Responses: 8,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 2,000.

Needs and Uses: The information collection requirement is necessary to obtain a self-reported record of criminal history from each employee, contractor, volunteer, family child care provider, and family child care adult family member residing in the home. Authority is granted by 42 United States Code § 13041 which requires the application for individuals who are seeking work for an agency of the Federal Government, or for a facility or program operated by (or through contract with) the Federal Government, to contain a question asking whether the individual has ever been arrested for or charged with a crime involving a child, and if so requiring a description of the disposition of the arrest or charge. Individuals who are interested in working for the DoD or for a program operated by or through a contract with the DoD must complete the form prior to working with children under the age of 18 years.

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 13, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–20162 Filed 9–16–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2021–OS–0061]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by 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: Family Advocacy Program (FAP): Child Abuse and Domestic Abuse Incident Reporting System; OMB Control Number 0704–0536.

Type of Request: Regular.

Number of Respondents: 22,288.

Responses per Respondent: 1.

Annual Responses: 22,288.

Average Burden per Response: 45 minutes.

Annual Burden Hours: 16,716 hours.

Needs and Uses: This information collection provides the child abuse and domestic abuse incident data from the FAP Central Registry, as required by section 574 of the National Defense Authorization Act (NDAA) for FY 2017 (Pub. L. 114–328). In addition to meeting the Congressional requirement, this report provides critical aggregate information on the circumstances of child abuse/neglect and domestic abuse incidents, which further informs ongoing prevention and response efforts. The aggregate FAP Central Registry data derived from this information collection and submitted from each Military Service (Army, Navy, Marine Corps, and Air Force) offers a DoD-wide description of the child abuse and neglect and domestic abuse incidents that are reported to FAP. Respondents to the collection are military members and associated family members who have been referred to the installation FAP after a reported incident of family maltreatment, either domestic abuse or child maltreatment. The purpose of the collection is to determine eligibility for FAP services and to initiate a clinical record.

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 13, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–20168 Filed 9–16–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2021–OS–0058]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by 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 Security Education Program (Service Agreement Report for Scholarship and Fellowship Awards); DD Form 2752, DD Form 2753; OMB Control Number 0704–0368.

Type of Request: Regular.

Number of Respondents: 1,650.

Responses per Respondent: 1.

Annual Responses: 1,650.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 275 hours.

Needs and Uses: The David L. Boren National Security Education Act (NSEA), Title VIII of Public Law 102–183, Sec. 802(b), as amended, directs the Secretary of Defense to carry out a program to award undergraduate scholarships and graduate fellowships, as well as grants to U.S. institutions of higher education. Accordingly, the National Security Education Program (NSEP) was established. Both DD Form

2752, ''National Security Education Program (NSEP) Service Agreement for Scholarship and Fellowship Awards'' and the DD Form 2753, ''National Security Education Program (NSEP) Service Agreement Report (SAR) for Scholarship and Fellowship Awards'' are designed to appropriately collect information on the NSEP award recipients. This information will be used by the National Security Education Program Office, or designated administrative agents, as verification that applicable scholarship and fellowship recipients are fulfilling service obligations mandated by the David L. Boren National Security Education Act of 1991, Title VIII of Public Law 102–183, as amended.

Affected Public: Individuals or households.

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 13, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–20148 Filed 9–16–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2021–OS–0074]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by 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: Medical Screening of Military Personnel-Medical History Report and Accession Medical History Report; DD Form 2807–1/DD Form 2807–2; OMB Control Number 0704–0413.

Type of Request: Regular.

Number of Respondents: 773,000.

Responses per Respondent: 1.

Annual Responses: 773,000.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 128,833 hours.

Needs and Uses: This information collected is the basis for determining medical eligibility of applicants for entry in the Armed Forces. This information is needed to determine the medical qualifications of applicants based upon their current and past medical history. The information obtained on the DD Form 2807–2 ensures the recruiter that an applicant has identified any medical disqualifying condition(s) prior to application process and meets the Congressional requirements to obtain both the applicant's Health Care provider and Insurance provider. Additionally, it allows the military examining physician to obtain medical records critical to evaluating the applicant's medical condition(s) prior to their medical examination. The DD Form 2807–1 is needed as part of the required medical examination to assist physicians in making determinations as to acceptability of applicants for military service and verifies disqualifying medical condition(s) noted on the accession medical history report 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 13, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–20159 Filed 9–16–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2021–OS–0071]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by 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: Record of Military Processing-Armed Forces of the United States; DD Form 1966/USMEPCOM FORM 680–3A–E; OMB Control Number 0704–0173.

Type of Request: Regular.

Number of Respondents: 423,000.

Responses per Respondent: 2.

Annual Responses: 846,000.

Average Burden per Response: 21 minutes.

Annual Burden Hours: 296,100 hours.

Needs and Uses: Title 10 U.S.C., Sections 504, 505, 508, and 1012, Title 14, U.S.C., Sections 351 and 632; and Title 50 U.S.C., Appendix Section 451, and Executive Order 9397 require applicants to meet standards for enlistment into the Armed Forces. This information collection is the basis for determining eligibility of applicants for enlistment in the Armed Forces and is needed to verify data given by the applicant and to determine his/her qualification of enlistment. The information collected aids in the determination of qualifications, terms of service, and grade in which a person, if eligible, will enter active duty or reserve status. The information collected is used to feed other DoD and service-specific forms that later would be used to issue identification cards and receive benefits associated with military service.

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 13, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2021–20144 Filed 9–16–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2021–SCC–0134]

Agency Information Collection Activities; Comment Request; National Evaluation of the 2019 Comprehensive Centers Program Grantees

AGENCY: Institute of Educational Science (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before November 16, 2021.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2021–SCC–0134. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208C, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Andrew Abrams, 202–245–7500.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Evaluation of the 2019 Comprehensive Centers Program Grantees.

OMB Control Number: 1850–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 267.

Total Estimated Number of Annual Burden Hours: 107.

Abstract: The 2015 update to the federal law governing K–12 schooling gave state (SEAs) and local education agencies (LEAs) increased responsibilities, and, therefore, extra demands on their time and capabilities. The Comprehensive Centers program, funded by the U.S. Department of Education at over $50 million per year, provides training, tools, and other supports to help these agencies carry out their education plans and take steps to close achievement gaps. The Centers' services aim to build individual and organizational capacity to help identify and solve key problems. This evaluation will examine the delivery and usefulness of the Centers' technical assistance, given potential new stakeholder needs and changes in the Center program that took effect with the 20 new grants awarded in 2019. Congress requires a periodic evaluation of the Comprehensive Centers program,

with the results intended to inform ongoing program improvements.

Dated: September 13, 2021.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–20065 Filed 9–16–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2021–SCC–0133]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application for Grants Under the Upward Bound Program

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a reinstatement with change of a previously approved collection.

DATES: Interested persons are invited to submit comments on or before October 18, 2021.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kenneth Waters, 202–453–6273.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application for Grants under the Upward Bound Program.

OMB Control Number: 1840–0550.

Type of Review: A reinstatement with change of a previously approved collection.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 1,540.

Total Estimated Number of Annual Burden Hours: 51,080.

Abstract: The Department of Education is requesting a reinstatement with change of the application for grants under the Upward Bound (UB) Program. The Department is requesting a reinstatement with change because the previous UB application expired in October 2019 and the application will be needed for a Fiscal Year (FY) 2022 competition for new awards. The Department expects an increase in respondents for the FY 2022 competition for new awards. The FY 2022 application incorporates one competitive preference priority. This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection request.

Dated: August 14, 2021.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–20101 Filed 9–16–21; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Senior Executive Service Performance Review Board

AGENCY: Department of Energy

ACTION: Designation of Performance Review Board Chair.

SUMMARY: This notice provides the Performance Review Board Chair designee for the Department of Energy. This listing supersedes all previously published lists of Performance Review Board Chair.

DATES: This appointment is effective as of September 9, 2021.

Dennis M. Miotla (Primary)
Johnny O. Moore (Alternate)

Signing Authority

This document of the Department of Energy was signed on September 9, 2021, by Farhana Hossain, Acting Director for Office of Corporate Executive Management, Office of the Chief Human Capital Officer, 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 14, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2021–20115 Filed 9–16–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Senior Executive Service Performance Review Board

AGENCY: Department of Energy.

ACTION: Designation of Performance Review Board Standing Register.

SUMMARY: This notice provides the Performance Review Board Standing Register for the Department of Energy. This listing supersedes all previously published lists of PRB members.

DATES: This appointment is effective as of September 9, 2021.

Anderson, Sonja
Black, Steven

Boston, Robert
Debeauclair, Geoffrey
Flohr, Connie
Isom, Pamela
Johnson Jr., Thomas
Kim, Dong
Klausing, Kathleen
Konieczny, Katherine
Kremer, Kevin
Lee, Terri
Marlay, Robert
Monroe, Lewis
Nicoll, Eric
O'Konski, Peter
Rodgers, Jami
Satyapal, Sunita
West, William

Signing Authority

This document of the Department of Energy was signed on September 9, 2021, by Farhana Hossain, Acting Director for Office of Corporate Executive Management, Office of the Chief Human Capital Officer, 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 14, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2021–20116 Filed 9–16–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Coal Council; Meeting

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a virtual meeting of the National Coal Council (NCC) via WebEx. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, October 12, 2021; 2:30–3:30 p.m. (EST)

ADDRESSES: This will be a virtual meeting conducted through WebEx. If you wish to join the meeting you must register by close of business (5:00 p.m. EST) on Tuesday, October 5, 2021, by using the form available at the following URL: *https://www.ncc.energy.gov/ncc/future-meetings.* The email address you provide in the on-line registration form will be used to forward instructions on how to join the meeting using WebEx. WebEx requires a computer, web browser and an installed application (free). Instructions for joining the webcast will be sent to you two business days in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Thomas Sarkus, U.S. Department of Energy, National Energy Technology Laboratory, Mail Stop 920–125, P.O. Box 10940, Pittsburgh, PA 15236–0940; Telephone (412) 386–5981; email: *thomas.sarkus@netl.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Council: The National Coal Council provides advice and recommendations to the Secretary of Energy on general policy matters relating to coal and the coal industry.

Purpose of Meeting: The National Coal Council (the Council) will hold a virtual meeting via webcast at 2:30–3:30 p.m. (EST) on October 12, 2021, for the purpose of reviewing and voting on the following report: ''*Carbon Forward: Advanced Markets for Value-Added Products from Coal.*'' The draft report is available online at the following URL: *https://www.ncc.energy.gov/ncc/future-meetings.*

Tentative Agenda

1. Call to order and opening remarks by Thomas Sarkus, NCC Deputy Designated Federal Officer, U.S. Department of Energy
2. Presentation, Q&A session, and vote on NCC report: ''*Carbon Forward: Advanced Markets for Value-Added Products from Coal.*''
3. Public Comment Period and Closing Remarks
4. Adjourn

All attendees are requested to register in advance for the meeting at the following URL: *https://www.ncc.energy.gov/ncc/future-meetings.*

Public Participation: The meeting is open to the public. If you would like to file a written statement to be read during the virtual webcast, you may do so within three business days of the event. Please email your written statement to Thomas Sarkus at *thomas.sarkus@netl.doe.gov* by 5:00 p.m. (EST) on Thursday, October 7, 2021. If you would like to make an oral statement during the call regarding the report being reviewed, you must both register to attend the webcast and also contact Thomas Sarkus, (412) 386–5981, or *thomas.sarkus@netl.doe.gov* to state your desire to speak. You must make your request for an oral statement at least three calendar days before the meeting. Reasonable provision will be made to include oral statements at the conclusion of the meeting. However, those who fail to register in advance may not be accommodated. Oral statements are limited to 2-minutes per organization and per person.

Minutes: A recording of the call will be posted on the Council's website: *https://www.ncc.energy.gov/ncc/.*

Signed in Washington, DC, on September 13, 2021.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2021–20118 Filed 9–16–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5089–027]

Fall River Rural Electric Cooperative, Inc; 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:* New Major License.

b. *Project No.:* 5089–027.

c. *Date filed:* August 31, 2021.

d. *Applicant:* Fall River Rural Electric Cooperative, Inc. (Fall River).

e. *Name of Project:* Felt Hydroelectric Project.

f. *Location:* On the Teton River, near the town of Tetonia, in Teton County, Idaho. The project occupies 54.7 acres of federal land administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Nicholas Josten, 2742 Saint Charles Ave., Idaho Falls, Idaho 83404; (208) 528–6152.

i. *FERC Contact:* John Matkowski at (202) 502–8576, or *john.matkowski@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 30, 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: Felt Hydroelectric Project (P–5089–027).

m. The application is not ready for environmental analysis at this time.

n. *Project Description:* The existing Felt Project consists of: (1) A 125-foot-long, 12-foot-high concrete dam that includes the following sections: (a) 25-foot-wide sluiceway section with a 4-foot-wide fish ladder and a 14-foot-wide corrugated steel radial gate and (b) a 96-foot-wide uncontrolled overflow spillway with a crest elevation of 5,530-feet mean sea level (msl); (2) a 7-acre impoundment with a storage capacity of 28 acre-feet at a normal water surface elevation of 5,530-feet msl; (3) a 178-foot-long, 8.5-foot-deep fish screen structure equipped with a bar rack with 3/8-inch clear bar spacing and diamond mesh screen; (4) three intake openings located behind the fish screen each equipped with 10-foot-wide intake gates and 10-foot-wide trash racks with 3-inch clear bar spacing; (5) three, 8-foot-square unlined rock tunnels connecting the intakes to penstocks and consisting of: (a) A 180-foot-long Tunnel No. 1 connecting to a 280-foot-long, 78-inch-diameter steel penstock that bifurcates into two, 180-foot-long, 60-inch-diameter steel penstocks that connect to Powerhouse No. 1; and (b) A 180-foot-long Tunnel No. 2 and a 200-foot-long Tunnel No. 3 each connecting to a 1,750-foot-long, 96-inch-diameter steel penstock that connects to Powerhouse No. 2; (6) an 83-foot-long, 26-foot-wide, 13-foot-high reinforced concrete Powerhouse No. 1 containing two horizontal Francis turbine-generator units with a combined generating capacity of 1,950 kilowatts (kW); (7) a 36-foot-long, 36-foot-wide, 25-foot-high reinforced concrete Powerhouse No. 2 containing two vertical Francis turbine-generator units with a combined generating capacity of 5,500 kW; (8) two tailrace channels discharging to the Teton River from Powerhouses No. 1 and No. 2; (9) a 1,500-foot-long, 4.16 kilovolt (kV) overhead transmission line connecting Powerhouse No. 1 to a transformer located next to Powerhouse No. 2; (10) a 2,000-foot-long, 24.9 kV overhead transmission line leading from the transformer to the interconnection point; and (11) appurtenant facilities.

The 7.45-megawatt Felt Project is operated in run-of-river mode and generates an average of 33,100 megawatt-hours per year. A continuous minimum flow is released below the dam according to the following schedule: 20 cubic feet per second (cfs) from July 1 to March 14 and 50 cfs from March 15 to June 30.

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–5089). 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 (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 (if needed)—October 2021
Issue Notice of Acceptance—January 2021
Issue Scoping Document 1 for comments—February 2022
Issue Scoping Document 2—May 2022
Issue Notice of Ready for Environmental Analysis—May 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 13, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–20137 Filed 9–16–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15151–000]

City of North Little Rock; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On June 11, 2021, the City of North Little Rock filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the David D. Terry Lock & Dam Hydroelectric Project No. 15151–000 (David D. Terry Project, or project), a run-of-river project to be located in Pulaski County, Arkansas. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) An existing, 4,710-acre reservoir at a maximum water

surface elevation of 231.3 feet mean sea level; (2) an existing lock and dam, including a spillway section; (3) a new headrace intake channel; (4) a new concrete powerhouse housing the turbine-generator unit(s); (5) a new discharge penstock; (6) a new tailrace receiving flow from the penstock; (7) a new, 8-mile-long interconnection line to an existing, 69 kilo-Volt substation; and (8) appurtenant facilities. The estimated annual generation of the project would be 128 gigawatt-hours.

Applicant Contact: Scott Springer, 1400 W Maryland Ave., North Little Rock, Arkansas, 72118; phone: (501) 372–0100.

FERC Contact: Navreet Deo; phone: (202) 502–6304; email: *navreet.deo@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications 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. 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–15151–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–15151) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 13, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–20134 Filed 9–16–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG21–248–000.

Applicants: IP Radian, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of IP Radian, LLC.

Filed Date: 9/13/21.

Accession Number: 20210913–5183.

Comment Date: 5 p.m. ET 10/4/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–2043–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits informational filing on posted Effective Load Carrying Capability methodology documentation, model, and input data.

Filed Date: 9/13/21.

Accession Number: 20210913–5088.

Comment Date: 5 p.m. ET 10/4/21.

Docket Numbers: ER21–2183–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 3825 Prairie Hills Wind GIA—Deficiency Response to be effective 6/14/2021.

Filed Date: 9/13/21.

Accession Number: 20210913–5164.

Comment Date: 5 p.m. ET 10/4/21.

Docket Numbers: ER21–2261–001.

Applicants: Exelon Generation Company, LLC.

Description: Tariff Amendment: Request for Seven Day Deferral of Commission Action to be effective 9/14/2021.

Filed Date: 9/13/21.

Accession Number: 20210913–5074.

Comment Date: 5 p.m. ET 9/20/21.

Docket Numbers: ER21–2878–000.

Applicants: Salt Creek Solar, LLC.

Description: Request for Temporary Tariff Waiver, et al. of Salt Creek Solar, LLC.

Filed Date: 9/10/21.

Accession Number: 20210910–5178.

Comment Date: 5 p.m. ET 10/1/21.

Docket Numbers: ER21–2879–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 6187; Queue No. AF2–314 to be effective 8/12/2021.

Filed Date: 9/13/21.

Accession Number: 20210913–5036.

Comment Date: 5 p.m. ET 10/4/21.

Docket Numbers: ER21–2880–000.

Applicants: The Connecticut Light and Power Company.

Description: § 205(d) Rate Filing: Engineering Design and Procurement Agreement with EIP Investments–Black Rock Sub to be effective 9/14/2021.

Filed Date: 9/13/21.

Accession Number: 20210913–5077.

Comment Date: 5 p.m. ET 10/4/21.

Docket Numbers: ER21–2881–000.

Applicants: Power Authority of the State of New York, New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: Power Authority of the State of New York submits tariff filing per 35.13(a)(2)(iii: 205 SGIA between NYISO and NYPA for North Country SA No. 2648—CEII to be effective 8/27/2021.

Filed Date: 9/13/21.

Accession Number: 20210913–5089.

Comment Date: 5 p.m. ET 10/4/21.

Docket Numbers: ER21–2882–000.

Applicants: Pacific Gas and Electric Company.

Description: Application to Recover 50 Percent of Abandoned Plant Costs of Pacific Gas and Electric Company.

Filed Date: 9/10/21.

Accession Number: 20210910–5184.

Comment Date: 5 p.m. ET 10/1/21.

Docket Numbers: ER21–2883–000.

Applicants: New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: NYISO 205: Metering Services for Demand Side Resources to be effective 11/13/2021.

Filed Date: 9/13/21.

Accession Number: 20210913–5149.

Comment Date: 5 p.m. ET 10/4/21.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES21–67–000.

Applicants: Mississippi Power Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Mississippi power Company.

Filed Date: 9/10/21.

Accession Number: 20210910–5185.

Comment Date: 5 p.m. ET 10/1/21.

Docket Numbers: ES21–68–000.

Applicants: Old Dominion Electric Cooperative.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Old Dominion Electric Cooperative8.

Filed Date: 9/13/21.

Accession Number: 20210913–5159.

Comment Date: 5 p.m. ET 10/4/21.

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 13, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–20129 Filed 9–16–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6440–010]

Lakeport Hydroelectric One, LLC; 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.:* 6440–010.

c. *Date filed:* August 30, 2021.

d. *Applicant:* Lakeport Hydroelectric One, LLC (Lakeport).

e. *Name of Project:* Lakeport Hydroelectric Project (project).

f. *Location:* On the Winnipesaukee River in Belknap 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:* Ms. Jody Smet, Lakeport Hydroelectric One, LLC c/o Eagle Creek Renewable Energy, LLC, 7315 Wisconsin Avenue, Suite 1100W, Bethesda, MD 20814; Phone at (240) 482–2700, or email at *jody.smet@eaglecreekre.com.*

i. *FERC Contact:* Erin Kimsey at (202) 502–8621, or *erin.kimsey@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 29, 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, MD 20852. All filings must clearly identify the project name and docket number on the first page: Lakeport Hydroelectric Project (P–6440–010).

m. The application is not ready for environmental analysis at this time.

n. *Project Description:* The existing Lakeport Project consists of: (1) A 220-foot-long, 10-foot-high concrete gravity dam that includes three 10-foot-high, 18-foot-wide gates, a spillway, and a stoplog gate; (2) an impoundment with a surface area of approximately 70 square miles at an elevation of 504 feet NGVD 29; (3) a 40-foot-wide, 12-foot-long concrete and granite intake structure that is equipped with three headgates and a trashrack with 2-inch clear bar spacing with a 0.75-inch overlay; (4) a concrete and lumber powerhouse containing three 200-kilowatt (kW) vertical submersible Flygt turbine-generator units located on concrete pilings outside for a total installed capacity of 600 kW; (5) a 200-foot-long, 50-foot-wide tailrace that discharges into the Winnipesaukee River; (6) three 0.48-kilovolt (kV) generator leads, three 0.48/12.4-kV step-up transformers, and a 250-foot-long, 12.4 kV transmission line that connect the project to the local utility distribution system; and (7) appurtenant facilities.

The project is operated as a run of-river facility. The average annual generation of the project is approximately 2,250 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–6440). 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
Request Additional Information (if necessary)—February 2022
Issue Acceptance Letter—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.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–20135 Filed 9–16–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3409–034]

Boyne USA, Inc.; Notice of Petition for Declaratory Order

Take notice that on August 30, 2021, pursuant to Rule 207 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 385.207 (2020), Boyne USA, Inc., filed a petition for declaratory order (Petition) requesting that the Commission declare that the Michigan Department of Environment, Great Lakes, and Energy has waived its authority to issue a certification for the Boyne River Hydroelectric Project No. 3409 under Section 401 of the Clean Water Act, 33 U.S.C. 1341(a)(1), as more fully explained in the Petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

Any person wishing to comment on Boyne's Petition may do so.[1] The deadline for filing comments is 30 days from the issuance of this notice. The Commission encourages electronic submission of comments in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should send comments to the following address: Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852. Be sure to reference the project docket number (P–3409–032) with your submission.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons the opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the document 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 with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 13, 2021.

Dated: September 13, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–20128 Filed 9–16–21; 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 September 14, 2021, from approximately 9:00 a.m. to 5:00 p.m. Eastern time. The conference will be held remotely. This Supplemental Notice includes an updated pending proceedings list and attached is an agenda for the technical conference, which includes the final conference program and updated speaker list. Commissioners may attend and participate in the technical conference.

Discussions at the conference may involve issues raised in proceedings that are currently pending before the Commission. These proceedings include, but are not limited to:

	Docket No.
California Independent System Operator Corporation	ER21–2455–000.
California Independent System Operator Corporation	ER21–2779–000.
New York Independent System Operator, Inc	ER21–2460–000.
PJM Interconnection, L.L.C	ER21–1919–000.
PJM Interconnection, L.L.C	EL21–78–000, et al.
PJM Interconnection, L.L.C	EL19–58, et al.; ER19–1486, et al.
PJM Interconnection, L.L.C	ER21–2582–000.
Midcontinent Independent System Operator, Inc	ER21–2620–000.
Midcontinent Independent System Operator, Inc	ER21–2486–000; ER21–2487–000.
Midcontinent Independent System Operator, Inc	ER21–2720–000.
Midcontinent Independent System Operator, Inc	ER21–2801–000.
Midcontinent Independent System Operator, Inc	ER21–2797–000.

[1] Boyne's request is part of its relicensing proceeding in Project No. 3409–032. Thus, any person that intervened in the relicensing proceeding is already a party. Generally, the filing of a petition for a declaratory order involving an issue arising from the licensing proceeding does not trigger a new opportunity to intervene. Accordingly, at this point in this proceeding, any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedure that provides justification by reference to the factors set forth in Rule 214(d). The Commission may limit a late intervenor's participation to the issues raised in the petition for declaratory order. 18 CFR 385.214(d)(3)(i).

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-09142021*) 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 13, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–20136 Filed 9–16–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9058–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed September 3, 2021 10 a.m. EST Through September 13, 2021 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20210137, Fourth Final Supplemental, FHWA, VT, Champlain Parkway/Southern Connector Burlington Vermont, Review Period Ends: 10/18/2021, Contact: Patrick Kirby 802–828–4568.

EIS No. 20210138, Draft, USCG, PRO, Offshore Patrol Cutter Acquisition Program, Comment Period Ends: 11/01/2021, Contact: Andrew Haley 202–372–1821.

EIS No. 20210139, Final, USMC, USAF, AZ, Extension of the Barry M. Goldwater Range Land Withdrawal and Proposed Gila Bend Addition Land Withdrawal, Review Period Ends: 10/18/2021, Contact: Jon Haliscak 210–395–0615.

EIS No. 20210140, Draft, BLM, UT, Pine Valley Water Supply Project, Comment Period Ends: 11/01/2021, Contact: Brooklynn Cox 435–865–3073.

Dated: September 13, 2021.

Candi Schaedle,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2021–20119 Filed 9–16–21; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Senior Executive Service Performance Review Board—Appointment of Members

AGENCY: U.S. Equal Employment Opportunity Commission (EEOC).

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members to the Performance Review Board (PRB) of the EEOC.

FOR FURTHER INFORMATION CONTACT: Shelita Aldrich, Director, Operations Services Division, EEOC, 131 M Street NE, Washington, DC 20507, (202) 921–3089.

SUPPLEMENTARY INFORMATION: Publication of the PRB membership is required by 5 U.S.C. 4314(c)(4). The PRB reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and makes recommendations to the Chair, EEOC, with respect to performance ratings, pay level adjustments, and performance awards.

The following are the names and titles of executives appointed to serve as members of the Senior Executive Service PRB. Designated members will serve a 12-month term, which begins on November 1, 2021.

PRB Chair

Mr. Kevin Richardson, Chief Human Capital Officer, EEOC

Members

Ms. Julianne Bowman, Director, Chicago District, EEOC

Mr. Carlton Hadden, Director, Office of Federal Operations, EEOC

Mr. Richard Toscano, Director, Equal Employment Opportunity Staff, U.S. Department of Justice

Ms. Veronica Venture, Director, EEO and Diversity, Department of Homeland Security

Ms. Rosa Viramontes, Director, Los Angeles District, EEOC (Alternate)

Ms. Gwendolyn Reams, Associate General Counsel for Litigation Management Services, EEOC (Alternate)

By the direction of the Commission.

Mona Papillon,

Deputy Chief Operating Officer.

[FR Doc. 2021–20062 Filed 9–16–21; 8:45 am]

BILLING CODE 6570–01–P

EXPORT-IMPORT BANK

Sunshine Act Meetings; Correction

AGENCY: Export-Import Bank.

ACTION: Notice; correction.

SUMMARY: The Export-Import Bank published a notice in the **Federal Register** of September 14, 2021. This document is intended to correct the link to register for the meeting.

FOR FURTHER INFORMATION CONTACT: India Walker, External Enagagement Specialist, at 202–480–0062.

SUPPLEMENTARY INFORMATION: Notice of a public meeting of the Advisory Committee to be held virtually, was announced on September 14, 2021. The following is the correct link to register for the meeting.

Public Participation: The meeting will be open to public participation and time will be allotted for questions or comments submitted online. Members of the public may also file written statements before or after the meeting to *external@exim.gov.* Interested parties may register here for the meeting:

https://teams.microsoft.com/registration/PAFTuZHHMk2Zb1GDkIVFJw,5M1LfonJMEi2VFUgYRv6oQ,i145n2l9vkmDj5btNlkuGw,OBDNWGHni0u0T3ceNNIRZQ,dkSDmLQxcUOIzb6FFvE-yg,yZddqPI9TkSqQ2-

w2BOsbg?mode=read&tenantId=b953013c-c791-4d32-996f-518390854527.

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2021–20195 Filed 9–15–21; 11:15 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice: 2021–6028]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), 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 collection, as required by the Paperwork Reduction Act of 1995.

DATES: Comments must be received on or before November 16, 2021 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB 95–09) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038 Attn: OMB 3048–EIB 95–09. The form can be reviewed at *https://www.exim.gov/sites/default/files/pub/pending/95-09-li.pdf*

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Donna Schneider *donna.schneider@exim.gov*, 202–565–3612.

SUPPLEMENTARY INFORMATION: The Letter of Interest (LI) is an indication of Export-Import (EXIM) Bank's willingness to consider financing a given export transaction. EXIM uses the requested information to determine the applicability of the proposed export transaction and determines whether or not to consider financing that transaction.

Title and Form Number: EIB 95–09 Letter of Interest Application.

OMB Number: 3048–0005.

Type of Review: Regular.

Need and Use: The Letter of Interest (LI) is an indication of Export-Import (EXIM) Bank's willingness to consider financing a given export transaction. EXIM uses the requested information to determine the applicability of the proposed export transaction system prompts and determines whether or not to consider financing that transaction.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 400.

Estimated Time per Respondent: 0.75 hours.

Annual Burden Hours: 300.

Frequency of Reporting of Use: On occasion.

Government Expenses:

Reviewing Time per Year: 400.

Average Wages per Hour: $42.50.

Average Cost per Year: $17,000 (time * wages).

Benefits and Overhead: 20%.

Total Government Cost: $20,400.

Bassam Doughman,

IT Specialist.

[FR Doc. 2021–20059 Filed 9–16–21; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0139 and OMB 3060–0979; FR ID 48492]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it can further reduce the information collection burden for small business concerns with fewer than 25 employees.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before October 18, 2021.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection

burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0139.

Title: Application for Antenna Structure Registration.

Form Number: FCC Form 854.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit entities, not-for-profit institutions, and State, local, or Tribal governments.

Number of Respondents and Responses: 2,400 respondents; 57,100 responses.

Estimated Time per Response: .33 hours to 2.5 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third-party disclosure reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 1, 2, 4(i), 303, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 303, and 309(j), section 102(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4332(C), and section 1506.6 of the regulations of the Council on Environmental Quality, 40 CFR 1506.6.

Total Annual Burden: 25,682 hours.

Total Annual Cost: $1,176,813.

Needs and Uses: The purpose of FCC Form 854 (Form 854) is to register antenna structures that are used for radio communication services which are regulated by the Commission; to make changes to existing antenna structure registrations or pending applications for registration; or to notify the Commission of the completion of construction or dismantlement of such structures, as required by Title 47 of the Code of Federal Regulations, Chapter 1, Sections 1.923, 1.1307, 1.1311, 17.1, 17.2, 17.4, 17.5, 17.6, 17.7, 17.57 and 17.58.

Any person or entity proposing to construct or alter an antenna structure that is more than 60.96 meters (200 feet) in height, or that may interfere with the approach or departure space of a nearby airport runway, must notify the Federal Aviation Administration (FAA) of proposed construction. The FAA determines whether the antenna structure constitutes a potential hazard and may recommend appropriate painting and lighting for the structure. The Commission then uses the FAA's recommendation to impose specific painting and/or lighting requirements on radio tower owners and subject licensees. When an antenna structure owner for one reason or another does not register its structure, it then becomes the responsibility of the tenant licensees to ensure that the structure is registered with the Commission.

Section 303(q) of the Communications Act of 1934, as amended, gives the Commission authority to require painting and/or illumination of radio towers in cases where there is a reasonable possibility that an antenna structure may cause a hazard to air navigation. In 1992, Congress amended Sections 303(q) and 503(b)(5) of the Communications Act to make radio tower owners, as well as Commission licensees and permittees responsible for the painting and lighting of radio tower structures, and to provide that non-licensee radio tower owners may be subject to forfeiture for violations of painting or lighting requirements specified by the Commission.

OMB Control Number: 3060–0979.

Title: License Audit Letter.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit entities, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 25,000 respondents; 25,000 responses.

Estimated Time per Response: .50 hours.

Frequency of Response: One-time reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 154(i), 155(c), 157, 201, 202, 208, 214, 301, 302a, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 331, 332, 333, 336, 534 and 535.

Total Annual Burden: 12,500 hours.

Total Annual Cost: No cost.

Needs and Uses: The Commission is seeking OMB approval for an extension of this information collection in order to obtain their full three-year approval. There is no change to the reporting requirement. There is no change to the Commission's burden estimates. The Wireless Telecommunications (WTB) and Public Safety and Homeland Security Bureaus (PSHSB) of the FCC periodically conduct audits of the construction and/or operational status of various Wireless radio stations in its licensing database that are subject to rule-based construction and operational requirements. The Commission's rules for these Wireless services require construction within a specified timeframe and require a station to remain operational in order for the license to remain valid. The information will be used by FCC personnel to assure that licensees' stations are constructed and currently operating in accordance with the parameters of the current FCC authorization and rules.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–20084 Filed 9–16–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of the FDIC's Response to Exception Requests Pursuant to Recordkeeping for Timely Deposit Insurance Determination

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of the FDIC's response to exception requests pursuant to the recordkeeping for timely deposit insurance determination rule.

SUMMARY: In accordance with its rule regarding recordkeeping for timely deposit insurance determination, the FDIC is providing notice that it has granted time-limited exception relief to two covered institutions from the information technology system and recordkeeping requirements applicable to deposits reflected on loan systems, including deposits resulting from credit balances on an account for debt owed to the covered institution and deposits held in escrow by a covered institution. The two covered institutions are in the process of converting or upgrading their loan systems.

DATES: The FDIC's grant of exception relief is effective as of September 14, 2021.

FOR FURTHER INFORMATION CONTACT: Cassandra Knighton, Acting Section Chief, Division of Complex Institution Supervision and Resolution; *CKnighton@FDIC.gov;* 972–761–2802.

SUPPLEMENTARY INFORMATION: The FDIC granted a time-limited exception request to two covered institutions pursuant to the FDIC's rule entitled ''Recordkeeping for Timely Deposit Insurance Determination,'' codified at 12 CFR part 370 (part 370).[1] Part 370 generally requires covered institutions to implement the information technology system and recordkeeping capabilities needed to quickly calculate the amount of deposit insurance coverage available for each deposit account in the event of failure. Pursuant to § 370.8(b)(1), one or more covered institutions may submit a request in the form of a letter to the FDIC for an exception from one or more

[1] 12 CFR part 370.

of the requirements of part 370 if circumstances exist that would make it impracticable or overly burdensome to meet those requirements. Pursuant to § 370.8(b)(2), the FDIC publishes a notice of its response to each exception request in the **Federal Register**. Pursuant to § 370.8(b)(3), a covered institution may rely upon another covered institution's exception request which the FDIC has previously granted by notifying the FDIC that it will invoke relief from certain part 370 requirements and demonstrating that the covered institution has substantially similar facts and circumstances to those of the covered institution that has already received the FDIC's approval. The notification letter must also include the information required under § 370.8(b)(1) and cite the applicable notice published pursuant to § 370.8(b)(2). Unless informed otherwise by the FDIC within 120 days after the FDIC's receipt of a complete notification for exception, the exception will be deemed granted subject to the same conditions set forth in the FDIC's published notice.

These grants of relief will be subject to ongoing FDIC review, analysis, and verification during the FDIC's routine part 370 compliance tests. The FDIC presumes each covered institution is meeting all the requirements set forth in the Rule unless relief has otherwise been granted. These grants of relief may be rescinded or modified upon: Discovery of misrepresentation; material change of circumstances or conditions related to the subject accounts; or failure to satisfy conditions applicable to each. The following exceptions were granted by the FDIC as of September 14, 2021.

I. Certain Deposits Reflected on Loan Systems for Which the Covered Institutions Is Not Capable of Completing Deposit Insurance Calculation Process Because Additional Time Is Required for System Upgrades or Conversions

The FDIC granted time-limited exception relief from part 370's information technology system requirements set forth in § 370.3 and recordkeeping requirements set forth in § 370.4 applicable to deposits reflected on loan systems, including deposits resulting from credit balances on an account for debt owed to the covered institution and deposits held in escrow by the covered institution. Such relief was granted to two covered institutions for up to 18 months after their compliance date. One covered institution requested exception relief from the recordkeeping requirements because it has multiple lending systems in need of recordkeeping upgrades and technical coding fixes without which it cannot produce the requisite data within the timeframe and in the format required by § 370.4(d). The covered institution requested exception relief in order to complete its IT solution to integrate data into its part 370 calculation system and perform relevant testing. The other covered institution requested exception relief from the information technology system and recordkeeping requirements because it requires additional time to complete the conversion of its commercial loan servicing platform and make system upgrades. The FDIC granted both covered institutions a time-limited exception for up to 18 months from their respective compliance dates.

In connection with the FDIC's grants of relief, these covered institutions represented that they will maintain the capability to place holds on the deposit accounts subject to the exception in the event of failure until deposit insurance can be calculated using data manually extracted from the current loan systems. As conditions of relief, these covered institutions must submit a status report to *part370@fdic.gov* at the midpoint of the exception relief period and immediately bring to the FDIC's attention any change of circumstances or conditions.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on September 14, 2021.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–20160 Filed 9–16–21; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 21–08]

Eucatex of North America Inc., Complainant v. CMA CGM (America) LLC and Fenix Marine Services Ltd., Respondents; Notice of Filing of Complaint and Assignment

Served: September 14, 2021.

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Eucatex of North America Inc., hereinafter ''Complainant'', against CMA CGM (America) LLC (CMA) and Fenix Marine Services Ltd. (FMS), hereinafter ''Respondents''. Complainant state that it is a Georgia corporation. Complainant alleges that Respondent CMA is a New Jersey company and a common carrier under 46 U.S.C. 40102(7), and that Respondent FMS is a Delaware corporation and a marine terminal operator under 46 U.S.C. 40102(15).

Complainant alleges that Respondents violated 46 U.S.C. 41102(c), and 46 CFR 545.4 and 545.5, in relation to demurrage charges imposed on several shipments. The full text of the complaint can be found in the Commission's Electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/21-08/*.

This proceeding has been assigned to Office of Administrative Law Judges. The initial decision of the presiding office in this proceeding shall be issued by September 14, 2022, and the final decision of the Commission shall be issued by March 28, 2023.

Rachel E. Dickon,

Secretary.

[FR Doc. 2021–20179 Filed 9–16–21; 8:45 am]

BILLING CODE 6730–02–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 4, 2021.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001. Comments can also be sent electronically to *Comments.applications@ny.frb.org:*

1. *Lucia de Campos Faria, Junia de Campos Faria Ziegelmeyer, and Eliana de Campos Faria, all of Sao Paulo, Brazil; Flavia Faria Vasconcellos, Rio de Janeiro, Brazil; The FC Family Trust, The White Dahlia Company Inc., as trustee, both of Hampton, New Hampshire; and Claudia de Faria Carvalho, New York, New York, as primary beneficiary of the FC Family Trust;* to acquire voting shares of Delta Investment Company (Cayman), George Town, Cayman Islands, and thereby indirectly acquire voting shares of Delta National Bank and Trust Company, New York, New York.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The James G. Fitzgerald Trust dated August 31, 1988, the Gerald F. Fitzgerald Family Trust UAD January 18, 1988, the Spoonbill Trust, the Anhinga Trust, and the Sandhill Trust, James G. Fitzgerald, as trustee to all trusts, and all of Naples, Florida; the Whooper Trust, Jane M. Fitzgerald, as trustee, both of Naples, Florida; and the Gerald F. Fitzgerald, Jr. Trust dated September 10, 1987, Gerald F. Fitzgerald, Jr., as trustee, both of Chicago, Illinois;* to join the Fitzgerald Family Control Group, a group acting in concert to acquire additional voting shares of Southern Wisconsin Bancshares Corporation, Inverness, Illinois and thereby indirectly acquire voting shares of Farmers Savings Bank, Mineral Point, Wisconsin.

C. 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. *John Russell Meeks, Fayetteville, Arkansas;* to acquire additional voting shares of Chambers Bancshares, Inc., and thereby indirectly acquire voting shares of Chambers Bank, both of Danville, Arkansas.

D. Federal Reserve Bank of Dallas (Karen Smith, Director, Applications) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Stephen Van Eversull, Natchitoches, Louisiana;* to acquire additional voting shares of City Bancshares, Inc., and thereby indirectly acquire voting shares of City Bank & Trust Company, both of Natchitoches, Louisiana.

Board of Governors of the Federal Reserve System, September 14, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–20178 Filed 9–16–21; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[Notice–PBS–2021–05; Docket No. 2021–0002; Sequence No. 18]

Federal Management Regulation; Designation of Federal Building

AGENCY: Public Buildings Service (PBS), General Services Administration (GSA).

ACTION: Notice of a bulletin.

SUMMARY: The attached bulletin announces the designation of a Federal building.

DATES: This bulletin expires March 14, 2022. The building designation remains in effect until canceled or superseded by another bulletin.

FOR FURTHER INFORMATION CONTACT: General Services Administration, Public Buildings Service (PBS), Office of Portfolio Management, Attn: Chandra Kelley, 77 Forsyth Street SW, Atlanta, GA 30303, at 404–562–2763, or by email at *chandra.kelley@gsa.gov.*

SUPPLEMENTARY INFORMATION: This bulletin announces the designation of a Federal building. Public Law 115–39, dated June 6, 2017, designated the Federal Building located at 719 Church Street in Nashville, TN, as the ''Fred D. Thompson Federal Building and United States Courthouse.'' The name sequence was later modified by the Administrator of General Service on June 19, 2019 to the ''Fred D. Thompson United States Courthouse and Federal Building'' in accordance with the authority set forth at 40 U.S.C. 3102.

Robin Carnahan,

Administrator of General Services.

[FR Doc. 2021–20146 Filed 9–16–21; 8:45 am]

BILLING CODE 6820–Y1–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0319; Docket No. 2021–0001; Sequence No. 11]

Information Collection; CDP Supply Chain Climate Change Information Request

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB), GSA will invite the public to comment on a renewal and extension concerning the CDP Supply Chain Climate Change Information Request.

DATES: GSA will consider all comments received by November 16, 2021.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''Information Collection 3090–0319; CDP Supply Chain Climate Change Information Request.'' Select the link ''Comment Now'' that corresponds with ''Information Collection 3090–0319; CDP Supply Chain Climate Change Information Request.'' Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 3090–0319; CDP Supply Chain Climate Change Information Request'' on your attached document. If your comment cannot be submitted using *regulations.gov,* call or email the point of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite ''Information Collection 3090–0319; CDP Supply Chain Climate Change Information Request'', in all correspondence related to this collection. Comments received generally will be posted without change to *regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr. Jed Ela, Sustainability Advisor, Office of Government-wide Policy, at *jed.ela@gsa.gov,* 202–854–8804.

SUPPLEMENTARY INFORMATION:

A. Purpose

The CDP Supply Chain Climate Change Information Request is an electronic questionnaire designed to collect information that is widely used by large private and public sector organizations to understand, assess, and mitigate potentially disruptive and costly supply chain risks, investment risks, and environmental impacts. The questionnaire is administered by CDP

North America, Inc., a 501(c)(3) nonprofit organization (''CDP''). CDP administers the questionnaire annually on behalf of over 590 institutional investors, 200 major corporations, and several large governmental purchasing organizations in addition to GSA. CDP's most recent annual survey was directed to over 20,000 companies, with over 9,600 electing to respond.

Under previously approved information collection requests, GSA has directed CDP since 2017 to include several hundred major Federal contractors annually among its potential survey respondents. In accordance with 31 U.S. Code § 3512(c)(1)(b), GSA uses information received from these companies via CDP to inform and develop purchasing policies and contract requirements necessary to safeguard Federal assets against waste, loss, and misappropriation resulting from unmitigated exposure to supply chain energy market and environmental risks. GSA also uses the information in accordance with Executive Orders 13990, 14008, and 14030 to inform development of policies and programs to reduce climate risks and greenhouse gas emissions associated with federal procurement activities.

For example, GSA has used CDP information in recent years to perform critical market research in connection with multi-billion-dollar strategic contracting efforts. In one case, GSA determined that data center facilities used by potential network infrastructure providers could be at risk due to flooding, extreme heat, or lack of available cooling water sources, placing Federal client operations at risk. In another case, GSA used information from the CDP survey to research potential contractors' existing risk mitigation and greenhouse gas reduction practices and to design appropriate contract requirements to ensure that contractors assess and mitigate these risks and reduce greenhouse gases associated with their federal contract activities. In another case, GSA determined that energy savings practices available to potential information technology service providers could significantly lower their overhead costs and that this would likely reduce contract costs for GSA and other Federal agencies. GSA uses the information collected to research development of similar policies and programs and to verify contractor compliance with existing programs.

B. Annual Burden Hours

GSA expects to direct CDP to request voluntary survey responses from up to 500 large and medium-sized businesses per year. Estimates of response time per respondent vary greatly depending on whether each requested respondent (a) elects not to respond; (b) responds, but would have responded to CDP regardless of GSA's request (because the respondent was also requested to respond to CDP by other customer and/or investor stakeholders); or (c) responds to CDP because of GSA's request. Analysis of total response time is thus based on estimates for each of these categories.

(a) Requested respondents who elect not to respond. Based on historical CDP response rates and GSA's intended recipients, GSA estimates that 250 out of 500 annual requested respondents will be in this category. Hour burden for this category: 250 non-responses; time per respondent 0; total time 0.

(b) Respondents who would have responded to CDP regardless of GSA's request. These respondents will complete some or all of the collection instrument, but would have done so regardless of GSA's request. In addition, some of these respondents will answer a small number of additional questions (requiring a small fraction of their overall response time to CDP) based on GSA's request. In addition, all of these respondents will need to complete one additional question in order to direct CDP to share their responses with GSA. Based on historical CDP response rates and GSA's intended recipients, GSA estimates that 220 out of 500 annual requested respondents will be in this category. Hour burden for this category: 220 responses; average time per respondent 5 minutes; total burden 18 hours.

(c) Respondents who respond to CDP because of GSA's request. These respondents may need to invest significant time drafting their responses and gathering facts, including searching and compiling existing data sources such as utility bills, and completing and reviewing the collection instrument. Based on historical CDP response rates and GSA's intended recipients, GSA estimates that 30 out of 500 annual requested respondents will be in this category. Based on discussions with several dozen previous respondents to CDP's questionnaire, as well as public input received in response to a related information collection request notice (see 82 FR 3794), time burden for this collection is estimated to average 120 hours per response. Hour burden for this category: 30 responses; average time per respondent 120 hours; total burden 3,600 hours.

Based on the individual category response times above, the total estimated response burden for all 500 requested respondents is summarized below.

Frequency: Annual.
Affected Public: Federal contractors.
Number of Respondents: 500.
Responses per Respondent: 1.
Total Annual Responses: 250.
Estimated Time Per Respondent: 14.5.
Total Burden Hours: 3,618.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary, whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Beth Anne Killoran,

Deputy Chief Information Officer.

[FR Doc. 2021–20140 Filed 9–16–21; 8:45 am]

BILLING CODE 6820–14–P

GULF COAST ECOSYSTEM RESTORATION COUNCIL

[Docket No.: 109132021–1111–03]

Notice of Proposed Subaward Under a Council-Selected Restoration Component Award

AGENCY: Gulf Coast Ecosystem Restoration Council.

ACTION: Notice.

SUMMARY: The Gulf Coast Ecosystem Restoration Council (RESTORE Council) publishes notice of proposed subawards from the U.S. Environmental Protection Agency (EPA) to implement the Gulf of Mexico Conservation Enhancement Grant Program (GMCEGP), which is an approved project on the Initial Funded Priorities List.

FOR FURTHER INFORMATION CONTACT: Please send questions to Joshua Easton by email *joshua.easton@restorethegulf.gov* or phone: (504) 252–7717.

SUPPLEMENTARY INFORMATION: Section 1321(t)(2)(E)(ii)(III) of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies Act of 2012 (33 U.S.C. 1321(t)) (RESTORE Act) and Treasury's implementing regulation at 31 CFR 34.401(b), require that, for purposes of

awards made under the Council-Selected Restoration Component, a State or Federal award recipient may make a grant or subaward to or enter into a cooperative agreement with a nongovernmental entity that equals or exceeds ten (10) percent of the total amount of the award provided to the State or Federal award recipient only if certain notice requirements are met. Specifically, at least 30 days before the State or Federal award recipient enters into such an agreement, the Council must publish in the **Federal Register** and deliver to specified Congressional Committees the name of the recipient and subrecipient; a brief description of the activity, including its purpose; and the amount of the award. This notice accomplishes the **Federal Register** requirement.

Description of Proposed Action

As specified in the Initial Funded Priorities List, which is available on the Council's website at Initial (2015) Funded Priorities List | Restore The Gulf, RESTORE Act funds in the amount of $2,472,917 to implement the Gulf of Mexico Conservation Enhancement Grant Program (GMCEGP) will be provided through an interagency agreement (IAA) with the U.S. Environmental Protection Agency (EPA). The GMCEGP will support the primary RESTORE Comprehensive Plan goal of restoring and conserving habitat. Under the GMCEGP Interagency Agreement, EPA will provide subawards to non-profit organizations in the amounts of $501,464 to the Atlanta Botanical Garden; $300,000 to the Galveston Bay Foundation; $250,000 to the Nature Conservancy; and $500,000 to the Partnership for Gulf Coast Land Conservation. Through these subawards, the GMCEGP will: (1) Enhance land protection and conservation in priority landscapes, (2) improve habitats and water quality; and (3) enhance the understanding of the benefit of land protection to communities through focused outreach and education supporting conservation and stewardship.

Keala Hughes,

Director of External Affairs and Tribal Relations.

[FR Doc. 2021–20066 Filed 9–16–21; 8:45 am]

BILLING CODE 6560–58–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting and request for comment.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting of the Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board). This meeting is open to the public, but without a public comment period. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcomed to listen to the meeting by joining the teleconference (information below). The audio conference line has 150 ports for callers.

DATES: The meeting will be held on October 20, 2021, from 10:30 a.m. to 1:00 p.m., EDT. The public may submit written comments from September 17, 2021 through October 13, 2021.

ADDRESSES: You may submit comments by mail to: Sherri Diana, National Institute for Occupational Safety and Health, 1090 Tusculum Avenue, MS C–34, Cincinnati, Ohio 45226.

Meeting Information: Audio Conference Call via FTS Conferencing. The USA toll-free dial-in number is 1–866–659–0537; the pass code is 9933701.

FOR FURTHER INFORMATION CONTACT: Rashaun Roberts, Ph.D., Designated Federal Official, NIOSH, CDC, 1090 Tusculum Avenue, Mailstop C–24, Cincinnati, Ohio 45226, Telephone: (513) 533–6800, Toll Free: 1 (800) CDC–INFO, Email: *ocas@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC). In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC.

The Advisory Board's charter was issued on August 3, 2001, renewed at appropriate intervals, rechartered on March 22, 2020, and will terminate on March 22, 2022.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Considered: The agenda will include discussions on the following: Work Group and Subcommittee Reports; Update on the Status of SEC Petitions; and plans for the December 2021 Advisory Board Meeting. Agenda items are subject to change as priorities dictate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2021–20150 Filed 9–16–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–21–21HZ; Docket No. CDC–2021–0097]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Reducing Fatigue Among Taxi Drivers. The goal of the proposed collection is to evaluate two interventions, a training and a wrist-device that provides personalized daily fatigue scores, designed to enable taxi drivers to reduce their fatigue levels. This research study involves two parts: Development of a fatigue management eLearning training tool designed for drivers-for-hire (*e.g.,* taxi drivers; ride sourcing drivers); and an evaluation of the effectiveness of this training alone and paired with the wrist-device that provides personalized daily fatigue scores.

DATES: CDC must receive written comments on or before November 16, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0097 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, H21–8, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

Reducing Fatigue Among Taxi Drivers—New—National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Taxi drivers routinely work long hours and late night or early morning shifts. Shift work and long work hours are linked to many health and safety risks due to disturbances to sleep and circadian rhythms. Fatigue is a significant contributor to transportation-related injuries, most notably among shift workers. Such work schedules and inadequate sleep likely contribute to health issues and injuries among taxi drivers, who experience a roadway fatality rate 3.5 times higher than all civilian workers and had the highest rate of nonfatal work-related motor vehicle injuries treated in emergency departments. The urban and interurban transportation industry ranks the third highest in costs per employee for motor vehicle crashes. Tired drivers endanger others on the road (*e.g.,* other drivers, passengers, bicyclists, pedestrians) in addition to themselves and their passengers. An important approach to reducing fatigue-related risks is to inform employers and taxi drivers about the risks and strategies to reduce their risks. The purpose of this project is to develop and evaluate a training program to inform taxi drivers, and other drivers for hire who transport passengers, of the risks linked to shift work and long work hours and evaluate strategies for taxi drivers to reduce these risks.

The proposed study site will be the Flywheel Taxi Company in San Francisco, with approximately 500 drivers, who have agreed to share data collected on the study participants. The recruitment of 180 study participants and data collection onsite will be performed by a NIOSH contractor trained by the NIOSH project personnel. This research study involves two parts: Development of a fatigue management eLearning Training Tool designed for drivers-for-hire (*e.g.,* taxi drivers; ride sourcing drivers); and an evaluation of the use of this tool as an intervention. The training tool will educate drivers about fatigue as a risk factor for motor vehicle crashes, the negative health and safety effects of fatigue, and how to reduce fatigue by improving sleep, health, nutrition, and work schedules. There will be pre- and post-module knowledge tests to evaluate the training. The training will be offered online, free of charge, and will be viewable on multiple platforms (*e.g.,* smartphone, tablet, laptop). All participants will also wear a wristband actigraph used to measure sleep/wake cycles, which will serve as a second intervention. The actigraph data will provide a personalized daily measure of fatigue each participant can use as an external prompt to assess individual fatigue levels and trigger self-reflection on fitness to drive and act accordingly. A randomized pre-post with control group longitudinal study design will evaluate

the training and the driver's response to feedback from the actigraph. Specifically, there are two intervention groups: (1) Training plus actigraph fatigue level feedback and (2) training only with wearing actigraph but no fatigue level feedback. The control group will receive neither training nor feedback on fatigue levels from their actigraph. Participants will complete a baseline and follow-up Work and Health survey, sleep and activities diaries, and sleep health knowledge questions during each of 5 observation periods. The Work and Health survey administered in the first observation period will be more comprehensive and the abbreviated follow up Work and Health surveys administered for the remaining observation periods will serve to capture only responses to questions that can change from one observation period to the next. Only participants randomly selected to take the training will complete a training evaluation survey used to strengthen the training's effectiveness. Data will also be collected from company installed in-vehicle monitoring systems on safety critical events (*e.g.,* hard braking, speeding) already collected on all drivers as a direct measurement of fatigue-related driving performance events used to validate self-report data. As part of their daily sleep and health diaries drivers will be asked to complete three-minute psychomotor vigilance tests (PVTs) five times throughout the day, to directly measure alertness using an app installed on an electronic device. At the end of the data collection period the training will be offered to the remaining study participants who will be provided an opportunity, but no remuneration, to complete the training and training survey.

Study staff will use the findings from this evaluation to improve the training program, including content and delivery, as well as compare fatigue between intervention groups. Potential impacts of this project include improvements in work behaviors for coping with shift work and long work hours and an objective reduction in fatigue compared to the control groups. This project is poised to have considerable impact in the contribution of an evidence base for effective interventions that could be used by other taxi companies and drivers for ride sourcing companies to promote strategies in road safety.

The burden table lists that 120 of the 180 taxi drivers in the study will complete the online training and evaluation (approximately three hours). All drivers (180) will complete the Work and Health survey, and the knowledge survey each week of the study (five times each per participant). Each participant will complete the sleep and activity diary five times a day, each day for 35 days (175 times total) which will require approximately two minutes for each response. There will also be three meetings for recruitment and enrollment (once), fitting the actigraph (weekly), and a final meeting (weekly). The total estimated annualized burden is anticipated to be 2,700 hours. There are no costs to participants other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Taxi Drivers	Online Training & Evaluation	120	1	3	360
	Sleep & Activities Diary	180	175	2/60	1,050
	Work & Health Survey	180	5	45/60	675
	Knowledge survey	180	5	15/60	225
	Recruitment & Informed Consent	180	1	30/60	90
	Initial Meeting (Fit Actigraph)	180	5	10/60	150
	10-minute meeting (turn in devices, turn in diary, receive remuneration).	180	5	10/60	150
Total					2,700

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–20155 Filed 9–16–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)–RFA–OH–20–002, Commercial Fishing Occupational Safety Research Cooperative Agreement; and RFA–OH–20–003, Commercial Fishing Occupational Safety Training Project Grants.

Date: November 03, 2021.

Time: 1:00 p.m.–3:00 p.m., EDT.

Place: Video-Assisted Meeting.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Dan Hartley, Ed.D., Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC, 1095 Willowdale Road, Morgantown, West Virginia 26505, Telephone: (304) 285–5812; Email: *DHartley@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been

delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2021–20152 Filed 9–16–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Clinical Laboratory Improvement Advisory Committee (CLIAC). This meeting is open to the public, limited only by the webcast lines available. Check the CLIAC website on the day of the meeting for the web conference link *www.cdc.gov/cliac.*

DATES: The meeting will be held on November 3, 2021, from 11:00 a.m. to 6:00 p.m., EDT, and November 4, 2021, from 11:00 a.m. to 6:00 p.m., EDT.

ADDRESSES: This is a virtual meeting. Meeting times are tentative and subject to change. The confirmed meeting times, agenda items, and meeting materials including instructions for accessing the live meeting broadcast will be available on the CLIAC website at *www.cdc.gov/cliac.*

FOR FURTHER INFORMATION CONTACT: Nancy Anderson, MMSc, MT(ASCP), Senior Advisor for Clinical Laboratories, Division of Laboratory Systems, Center for Surveillance, Epidemiology and Laboratory Services, Office of Public Health Scientific Services, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop V24–3, Atlanta, Georgia 30329–4027, Telephone: (404) 498–2741; *NAnderson@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: This Committee is charged with providing scientific and technical advice and guidance to the Secretary, HHS; the Assistant Secretary for Health; the Director, CDC; the Commissioner, Food and Drug Administration (FDA); and the Administrator, Centers for Medicare and Medicaid Services (CMS). The advice and guidance pertain to general issues related to improvement in clinical laboratory quality and laboratory medicine practice and specific questions related to possible revision of the Clinical Laboratory Improvement Amendments of 1988(CLIA) standards. Examples include providing guidance on studies designed to improve safety, effectiveness, efficiency, timeliness, equity, and patient-centeredness of laboratory services; revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards on medical and laboratory practice; and the modification of the standards and provision of non-regulatory guidelines to accommodate technological advances, such as new test methods, the electronic transmission of laboratory information, and mechanisms to improve the integration of public health and clinical laboratory practices.

Matters To Be Considered: The agenda will include agency updates from CDC, CMS, and FDA. In addition to the general updates, agency presentations will include an overview of the FDA's Center for Biologics Evaluation and Research, a laboratory safety update, and a status report on the new CLIA regulations assessment workgroup. Presentations and CLIAC discussion will focus on next generation sequencing in clinical and public health laboratories and laboratory data exchange and harmonization. Agenda items are subject to change as priorities dictate.

It is the policy of CLIAC to accept written public comments and provide a brief period for oral public comments pertinent to agenda items. Public comment periods for each agenda item are scheduled immediately prior to the Committee discussion period for that item. In general, each individual or group requesting to present an oral comment will be limited to a total time of five minutes (unless otherwise indicated). Speakers should email *CLIAC@cdc.gov* or notify the contact person at least five business days prior to the meeting date. For individuals or groups unable to attend the meeting, CLIAC accepts written comments until the date of the meeting (unless otherwise stated). However, it is requested that comments be submitted at least five business days prior to the meeting date so that the comments may be made available to the Committee for their consideration and public distribution. All written comments will be included in the meeting Summary Report posted on the CLIAC website.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2021–20151 Filed 9–16–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–21–1274; Docket No. CDC–2021–0096]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the Million Hearts Hospital & Health System Recognition Program. This program recognizes institutions working systematically to improve the cardiovascular health of the population and communities they serve.

DATES: CDC must receive written comments on or before November 16, 2021.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2021–0096 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600

Clifton Road NE, Mailstop H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H21–8, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Million Hearts Hospitals & Health Systems Recognition Program (OMB Control No. 0920–1274, Exp. 11/30/2022)—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Heart disease, stroke and other cardiovascular diseases (CVDs) kill over 800,000 Americans each year, accounting for one in every three deaths. CVD is the nation's number one killer among both men and women, and the leading cause of health disparities. Million Hearts, a national, public-private initiative co-led by the Centers for Disease Control and Prevention (CDC) and the Centers for Medicare & Medicaid Services (CMS), was established to address this issue. Whether migrating towards value-based reimbursement or simply striving for a significant impact in reducing the devastation of heart attacks and strokes, clinical organizations are positioned to improve the health of the population they serve by implementing high-impact, evidence-based strategies. Achieving a Million Hearts Hospitals & Health Systems designation signals a commitment to not only clinical quality, but population health overall.

Initially launched in 2020, the Program will continue to recognize institutions that are working to systematically improve the cardiovascular health of the population and communities that they serve by implementing strategies under the Million Hearts priority areas of Keeping People Healthy, Optimizing Care, Improving Outcomes for Priority Populations, and Innovating for Health. CDC anticipates that new applicants will range from health systems with multiple hospitals, hospitals with and without ambulatory medical practices, and medical practices not affiliated with hospitals. Any clinical entity whose leaders consider it eligible may apply.

Recognition can be achieved by a robust commitment to implement specific strategies, by implementing specific strategies, and most importantly, by achieving specific outcomes. Applicants will complete the Million Hearts Hospitals & Health Systems Recognition Program application, indicating the areas in which they are committing to implement Million Hearts strategies; areas in which they have implemented key strategies; and those strategies for which they have achieved outcomes/results.

Applicants must address a minimum of one strategy in at least three of the four priority areas (Keeping People Healthy, Optimizing Care, Improving Outcomes for Priority Populations and Innovating for Health) that are outlined in the application. However, they are encouraged to target as many strategies as is appropriate for their institution. Applicants will be subject to a background check.

The Million Hearts Hospitals and Health Systems designation conveys that the institution is committed to preventing heart attacks and strokes by a combination of efforts that are about Keeping People Healthy, Optimizing Care, Improving Outcomes for Priority Populations and Innovating for Health. All applicants with reported outcomes and a select number of those who are committing to implement, or are implementing Million Hearts strategies, will be asked to participate in a semi-structured, qualitative interview. The purpose of the interview is to obtain in-depth contextual information about the Million Hearts strategies and facilitators used to achieve improved cardiovascular outcomes among the applicant's patient population. Applicants with reported outcomes will receive increased recognition from Million Hearts by having their success stories highlighted by Million Hearts by placement on the Million Hearts website or e-newsletter.

The program's web-based application will stay open throughout the year and applications will be reviewed on a quarterly basis and recognized within six months of acceptable review. CDC estimates that information will be collected from up to 50 applicants per year. The overall goal of the Million Hearts initiative is to prevent one million heart attacks and strokes. Promoting evidence-based strategies that prevent CVD is an additional focus of the initiative.

CDC will use the information collected through the Million Hearts Hospitals & Health Systems Recognition Program to increase widespread attention on successful and sustainable implementation strategies, improve understanding of these strategies at the practice level, bring visibility to organizations that commit, implement, or have implemented Million Hearts strategies and motivate other hospitals and health systems to strengthen their efforts to address CVD.

OMB approval is requested for three years. CDC requests approval for an estimated 149 annual burden hours. Participation is voluntarily, and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
Medical & Health Service Manager ..	Recognition Program Application	50	1	160/60	134
Medical & Health Service Manager ..	Interview Guide	30	1	30/60	15
Total	.....	.....	.....	.....	149

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–20156 Filed 9–16–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–21–0314]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled The National Survey of Family Growth (NSFG) to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on June 10, 2021 to obtain comments from the public and affected agencies. CDC received one non-substantive comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

The National Survey of Family Growth (NSFG) (OMB Control No. 0920–0314, Exp. 06/30/2021)—Reinstatement with Change—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on ''family formation, growth, and dissolution,'' as well as ''determinants of health'' and ''utilization of health care'' in the United States. This information collection request includes the data collection in 2022–2024 for the continuous National Survey of Family Growth (NSFG).

The NSFG was conducted periodically between 1973 and 2002, continuously in 2006–2010, and after a break of 15 months, continuously in 2011–2019, by the National Center for Health Statistics, CDC (CDC/NCHS). The response rate during the 2011–2019 data collection period ranged from 64.5–74.0%, and the cumulative response rate for this eight-year fieldwork period was 67.7%.

The NSFG program produces descriptive statistics which document factors associated with birth and pregnancy rates, including contraception, infertility, marriage, cohabitation, and sexual activity, in the US household population 15–49 years (15–44 prior to 2015), as well as behaviors that affect the risk of HIV and other sexually transmitted diseases (STD). The survey also disseminates statistics on the medical care associated with contraception, infertility, pregnancy, and related health conditions.

NSFG data users include the DHHS programs that fund the survey, including CDC/NCHS and 11 others within the Department of Health and Human Services:

- Eunice Kennedy Shriver National Institute for Child Health and Human Development (NIH/NICHD)
- Office of Population Affairs (OPA)
- Children's Bureau in the Administration for Children and Families (ACF/CB)
- Office of Planning, Research, and Evaluation (ACF/CB)
- Office on Women's Health (OASH/OWH)
- CDC's Division of HIV/AIDS Prevention (CDC/NCHHSTP/DHAP)
- CDC's Division of STD Prevention (CDC/NCHHSTP/DSTDP)
- CDC's Division of Adolescent and School Health (CDC/NCHHSTP/DASH)
- CDC's Division of Reproductive Health (CDC/NCCDPHP/DRH)
- CDC's Division of Cancer Prevention and Control (CDC/NCCDPHP/DCPC)
- CDC's Division of Violence Prevention (CDC/NCIPC/DVP)

The NSFG is also used by state and local governments (primarily for benchmarking to national data); private research and action organizations focused on men's and women's health, child well-being, and marriage and the

family; academic researchers in the social and public health sciences; journalists, and many others.

CDC requests OMB approval to reinstate NSFG data collection for three years, with changes. Each year, about 13,500 households will be screened, with about 5,000 participants interviewed annually. Interviews are expected to average 50 minutes for males and 75 minutes for females. Proposed changes include streamlining information collection content in some sections as well as adding a limited number of new questions, including questions about childhood experiences that may impact fertility and health outcomes in adulthood. Approximately 10% of respondents will be asked to participate in a brief verification process. Responses to the NSFG are confidential.

In addition, CDC plans to conduct several methodological studies designed to improve the efficiency and validity of NSFG data collection for the purposes described above. These include a test of face-to-face interview mode compared to multi-mode participation that also includes a web-based survey component; test of an electronic life history calendar; enhanced introductory and reminder emails to increase response rate; and collection of auxiliary information to reduce nonresponse bias or improve nonresponse bias estimation.

Participation is voluntary, and there is no cost to respondents other than their time. The total estimated annualized time burden to respondents is 6,122 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form	Number of responses	Responses per respondent	Average burden per response (in hours)
Household member	Screener Interview	13,500	1	3/60
Household Female 15–49 years of age	Female Interview	2,750	1	75/60
Household Male 15–49 years of age	Male Interview	2,250	1	50/60
Household member	Screener Verification	1,350	1	2/60
Household Individual 15–49 years of age	Main Interview Verification	500	1	5/60
Household Female 15–49 years of age	Respondent debriefing questions about calendar.	325	1	3/60
Household member	Phase 4 nonresponse follow-up questions.	375	1	5/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2021–20154 Filed 9–16–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–0180]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Generic Clearance for the Collection of Quantitative Data on Tobacco Products and Communications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by October 18, 2021.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0810. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Generic Clearance for the Collection of Quantitative Data on Tobacco Products and Communications

OMB Control Number 0910–0810—Extension

In order to conduct educational and public information programs relating to tobacco use as authorized by section 1003(d)(2)(D) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)(D)), FDA's Center for Tobacco Products will conduct research and use a variety of media to inform and educate the public, tobacco retailers, and health professionals about the health risks of tobacco use, how to quit using tobacco products, and FDA's role in regulating tobacco.

To ensure that these educational and public information programs have the highest potential to be received, understood, and accepted by those for whom they are intended, the Center for Tobacco Products will conduct research and develop health messages relating to the control and prevention of disease. In conducting such research, FDA will use quantitative methods (*i.e.,* surveys, experimental studies) for studies about tobacco products. These studies may be used to collect information related to foundational research informing message development or the formative pretesting of tobacco communication messages and other materials directed at consumers. This type of research involves: (1) Assessing audience knowledge, attitudes, behaviors, and other characteristics for the purpose of determining the need for and developing health messages, communication strategies, and public information programs; (2) pretesting these health messages, strategies, and program components while they are in developmental form to assess audience

comprehension, reactions, and perceptions; and (3) adding to the regulatory science knowledge base. Quantitative studies play an important role in exploring areas of research and gathering information because they can be used to summarize a population of interest on key variables or reveal systematic relationships between variables.

Foundational research to inform message development and the formative pretesting of messages are a staple of best practices in communications research. Obtaining voluntary feedback from intended audiences during the development of messages and materials is crucial for the success of every communication program. The purpose of obtaining information from formative pretesting is that it allows FDA to improve materials and strategies while revisions are still affordable and possible. Formative pretesting can also avoid potentially expensive and dangerous unintended outcomes caused by audiences interpreting messages in a way that was not intended by the drafters. By maximizing the effectiveness of messages and strategies for reaching targeted audiences, the frequency with which tobacco communication messages need to be modified should be greatly reduced.

The voluntary information collected will serve the primary purpose of providing FDA information about various measures of ad performance including message comprehension, perceived effectiveness, emotional responses and knowledge, attitudes, and behavior change to assess the ability of messages, advertisements, and materials to reach and successfully communicate with their intended audiences. Quantitative testing messages and other materials with a sample of the target audience will allow FDA to refine messages, advertisements, and materials directed at consumers while the materials are still in the developmental stage.

In addition, quantitative information is needed by FDA to track changes in response to policy and regulatory actions and to expand the tobacco regulatory science base by providing information on changing behaviors, knowledge, and attitudes about tobacco products, including postmarketing surveillance of tobacco products.

In the **Federal Register** of March 5, 2021 (86 FR 12952), FDA published a 60-day notice requesting public comment on the proposed collection of information. One PRA related comment was received.

(Comment) The comment suggested specific types of messages that FDA should test and then implement in public health campaigns.

(Response) FDA appreciates the comment. The content and focus on studies submitted through this generic clearance will depend on Agency priorities and needs, which are not yet determined at this time.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Screener	485,580	1	485,580	0.083 (5 minutes)	40,465
Self-Administered Surveys	133,728	1	133,728	0.33 (20 minutes)	44,576
Total					85,041

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Number of respondents to be included in each new survey will vary, depending on the nature of the material or message being tested and the target audience. Table 1 provides examples of the types of activities that may be administered and estimated burden levels during the 3-year period. Time to read, review, or complete the activity is built into the ''Average Burden per Response'' figures. Our estimated burden for the information collection reflects an overall increase of 60,000 hours and a corresponding increase of 461,808 responses. We attribute the adjustment to an increase in the number of new quantitative studies that are anticipated underneath this information collection during the next 3 years (proposed extension).

Dated: September 10, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–20057 Filed 9–16–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Product-Specific Guidances for Ferric Oxyhydroxide; Revised Draft Guidances for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of revised draft guidances for industry entitled ''Draft Guidance for Ferric Oxyhydroxide.'' The revised draft guidances, when finalized, will provide product-specific recommendations on, among other things, the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs) for ferric oxyhydroxide oral tablets (previously sucroferric oxyhydroxide) and ferric oxyhydroxide intravenous injectable (previously iron sucrose).

DATES: Submit either electronic or written comments on the draft guidances by November 16, 2021 to ensure that the Agency considers your comment on these draft guidances before it begins work on the final versions of the guidances.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted,

such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2007–D–0369 for ''Draft Guidance for Ferric Oxyhydroxide.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Christine Le, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4714, Silver Spring, MD 20993–0002, 301–796–2398 and/or *PSG-Questions@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products,'' which explained the process that would be used to make product-specific guidances available to the public on FDA's website at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs.*

As described in that guidance, FDA adopted this process to develop and disseminate product-specific guidances and to provide a meaningful opportunity for the public to consider and comment on the guidances. This notice announces the availability of revised draft guidances on ferric oxyhydroxide oral tablets and ferric oxyhydroxide intravenous injectable.

FDA initially approved new drug application (NDA) 205109 VELPHORO in November 2013 and NDA 021135 VENOFER in November 2000.[1] In March 2015, FDA issued a draft product specific guidance for industry on generic ferric oxyhydroxide oral tablets (previously entitled ''Draft Guidance for Sucroferric Oxyhydroxide'') and in November 2013, FDA issued a draft product specific guidance for industry on generic ferric oxyhydroxide intravenous injectable (previously entitled ''Draft Guidance for Iron Sucrose''). We are now issuing revised draft guidances for industry on generic ferric oxyhydroxide oral tablets and ferric oxyhydroxide intravenous injectable.

In August 2021, Sidley Austin LLP submitted a citizen petition requesting that FDA take several actions, including refraining from changing the product label or labeling for VENOFER, any action to modify the existing product-specific guidance for VENOFER, and any action to change the established name of VENOFER to ferric oxyhydroxide (Docket No. FDA–2021–P–0893). FDA is reviewing the issues raised in the petition and will consider any comments on the draft guidances entitled ''Draft Guidance for Ferric Oxyhydroxide'' before responding to the petition. FDA's issuance of the draft guidances on generic ferric oxyhydroxide oral tablets and ferric oxyhydroxide intravenous injectable does not represent a final decision on the issues raised in the petition.

The revised draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The revised draft guidances, when finalized, will represent the current thinking of FDA on the design of BE studies to support ANDAs for ferric oxyhydroxide. They do not establish any rights for any person and are not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

FDA tentatively concludes that this draft guidance contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

[1] The active ingredients were previously identified as sucroferric oxyhydroxide and iron sucrose, respectively, at the time of approval of these NDAs. FDA later concluded that the active ingredient in both of these products is ferric oxyhydroxide. See Letter to Areta Kupchyk, Foley Hoag LLP, from Patrizia Cavazzoni, M.D., Acting Director, Center for Drug Evaluation and Research, Docket No. 2016–P–1163 (May 26, 2021).

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: September 13, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–20064 Filed 9–16–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–1967]

Agency Information Collection Activities; Proposed Collection; Comment Request; Biosimilars User Fee Program

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with the Agency's Biosimilars User Fee Program.

DATES: Submit either electronic or written comments on the collection of information by November 16, 2021.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before November 16, 2021. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 16, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–N–1967 for ''Biosimilars User Fee Program.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice

of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Biosimilars User Fee Program

OMB Control Number 0910–0718—Revision

This information collection supports FDA's Biosimilars User Fee Program. The Biologics Price Competition and Innovation Act of 2009 (BPCI Act) amended the Public Health Service Act (PHS Act) to create an abbreviated approval pathway for biological products shown to be biosimilar to or interchangeable with an FDA-licensed reference biological product. Section 351(k) of the PHS Act (42 U.S.C. 262(k)), added by the BPCI Act, allows a company to apply for licensure of a biosimilar or interchangeable biological product (351(k) application). The BPCI Act also amended section 735 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379g) to include 351(k) applications as a type of application under ''human drug application'' for the purposes of the prescription drug user fee provisions.

The Biosimilar User Fee Act of 2012 (BsUFA) authorizes FDA to assess and collect user fees for certain activities in connection with biosimilar biological product development (BPD). BsUFA was reauthorized for an additional 5 years in August 2017 (BsUFA II). We developed the guidance entitled ''Assessing User Fees Under the Biosimilar User Fee Amendments of 2017'' to assist industry in understanding when fees are incurred and the process by which applicants can submit payments. The guidance also explains how respondents can request discontinuation from the BPD program as well as how respondents can request to move products to the discontinued section of the biosimilar list. Finally, the guidance provides information on the consequences of failing to pay BsUFA II fees as well as processes for submitting reconsideration and appeal requests. The guidance is available on the FDA website at: *https://www.fda.gov/media/134567/download.* The guidance was issued consistent with our Good Guidance Practice regulations in § 10.115 (21 CFR 10.115), which provide for public comment at any time.

We also developed Form FDA 3792, the Biosimilars User Fee Cover Sheet, which is submitted by each new BPD entrant (identified via a new meeting request or investigational new drug (IND) submission) and for new biologics license applications (BLAs). Form FDA 3792 requests the minimum necessary information to identify the request, to determine the amount of the fee to be assessed, and to account for and track user fees. The form provides a cross-reference of the fees submitted for an activity with the actual submission or activity by using a unique number tracking system. The information collected is used by FDA's Center for Drug Evaluation and Research and Center for Biologics Evaluation and Research to initiate the administrative screening of biosimilar biological product INDs and BLAs and to account for and track user fees associated with BPD meetings.

In addition to Form FDA 3792, the information collection includes an annual survey of all BsUFA II participants designed to provide information to FDA of anticipated BsUFA II activity in the upcoming fiscal year. This information helps FDA set appropriate annual BsUFA II fees.

For efficiency of Agency operations, we are consolidating related information collection currently approved in OMB control number 0910–0719. Specifically we are including our current commitment goals as set forth in the document ''BsUFA Reauthorization Performance Goals and Procedures Fiscal Years 2018 Through 2022,'' which represents the product of FDA discussions with regulated industry and public stakeholders, as mandated by Congress. The document, referred to as the ''BsUFA II letter,'' is available on our website at: *https://www.fda.gov/downloads/ForIndustry/UserFees/BiosimilarUserFeeActBsUFA/UCM521121.pdf.* The performance and procedural goals specified in the BsUFA II letter apply to aspects of the biosimilar biological product review program that are important for facilitating timely access to safe and effective biosimilar medicines for patients. Among those considerations is providing feedback to requests from regulated industry. Each year, FDA review staff participate in many meetings with requesters who seek advice relating to the development and review of a biosimilar or interchangeable product. Because these meetings often represent critical points in the regulatory and development process, it is important that there are clear procedures for the timely and effective conduct of such meeting. Accordingly, we issued draft guidance, ''Formal Meetings Between the FDA and Sponsors or Applicants of BsUFA Products,'' available on our website at: *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/formal-meetings-between-fda-and-sponsors-or-applicants-bsufa-products-guidance-industry.* The guidance was issued consistent with Section I, Part 6 of the BsUFA II letter (see p. 25), and with our Good Guidance practice regulations in § 10.115, which provide for public comment at any time. The guidance provides procedural instruction helpful to respondents and helps us reach what we believe is a more accurate burden estimate for the information collection.

Also available from our website is our Biosimilars Action Plan (BAP), which discusses key actions the Agency is taking to encourage innovation and competition among biologics and the development of biosimilars. The BAP builds on progress in implementing the approval pathway for biosimilar and interchangeable products, and provides interested persons with updates and resource material.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

FDA form; survey	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (hours)	Total hours
Biosimilar User Fee Cover Sheet (Form FDA 3792)	60	1	60	0.5 (30 minutes).	30
Annual Survey	60	1	60	1	60
Request for discontinuation from BPD program	10	1	10	1	10
Request to move products to discontinued section of the Biosimilar List.	5	1	5	0.5 (30 minutes).	2.5
Biosimilar product applications (351(k)(2)(A))	4	2.25	9	860	7,740
Interchangeable product applications (351(k)(2)(B)	2	1	2	860	1,720
Patent infringement notifications	4	2.25	9	2	18
Formal Meetings GFI Recommendations	69	2.30	159	21.42	3,405
Total			314		12,985.5

In anticipation of increased participation in the BPD program, we have increased our estimate to reflect an increase in the number of respondents since last OMB review. We have also made adjustments to reflect information collection consolidated from OMB control number 0910–0719. We invite comment on our estimates and assumptions.

Dated: September 9, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021–20060 Filed 9–16–21; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0313]

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 0990–0313–30D 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: 2021 National Blood Collection & Utilization Survey.

Type of Collection: Revision.

OMB No. 0990–0313: Office of the Assistant Secretary for Health.

Abstract: The 2021 National Blood Collection and Utilization Survey is a biennial survey of the blood collection and utilization community to produce reliable and accurate estimates of national and regional collections, utilization and safety of all blood products. The survey includes a core of standard questions on blood collection, processing, and utilization practices. The rapidly changing environment in blood supply and demand makes it important to have regular, periodic data describing the state of U.S. blood collections and transfusions for understanding the dynamics of blood safety and availability. Two sections were added to the survey to capture information on the impact of the COVID–19 pandemic on the blood supply during the course of 2020. The COVID–19 supplemental sections will only be included on the survey once.

Survey respondents will consist of blood collection centers, cord blood banks, and hospitals that perform blood transfusions, except those reporting fewer than 100 inpatient surgeries per year. For the purposes of this ICR, federal burden is only being placed on facilities located within the fifty states and the District of Columbia.

OMB approval is requested for three years. The total estimated annual burden is 4,532 hours.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Transfusing Hospitals	2,140	1	2	4,280
Hospital Blood Banks	76	1	2	152
Community-based blood center	50	1	2	100

ESTIMATED ANNUALIZED BURDEN TABLE—Continued

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Total	2,266			4,532

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2021–20183 Filed 9–16–21; 8:45 am]

BILLING CODE 4150–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders C Study Section: Neurological Sciences and Disorders Panel–C (NSD–C).

Date: October 6, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Diana M. Cummings, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Neurological Disorders and Stroke, NIH, NSC, 6001 Executive Blvd., Suite 3208, Rockville, MD 20852, *cummingsdi@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 13, 2021.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–20113 Filed 9–16–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Cancer Institute Council of Research Advocates.

The meeting will be held as a virtual meeting and is open to the public. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

Name of Committee: National Cancer Institute Council of Research Advocates.

Date: September 29, 2021.

Time: 12:00 p.m. to 4:00 p.m. EST.

Agenda: Welcome and Chairwoman's Remarks, NCI Updates, Legislative Update, and Director's Update.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Bethesda, MD 20892–2580 (Virtual Meeting).

Contact Person: Amy Williams, NCI Office of Advocacy Relations, National Cancer Institute, NIH, 31 Center Drive, Building 31, Room 10A28, Bethesda, MD 20892–2850, (301) 496–9723, *williaam@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: NCRA: *http://deainfo.nci.nih.gov/advisory/ncra/ncra.htm,* where an agenda and any additional information for the meeting will be posted when available.

This notice is being published less than 15 days prior to the meeting due to scheduling difficulties.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 13, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–20075 Filed 9–16–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Multi-site Clinical Trial Implementation.

Date: November 2, 2021.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Isis S. Mikhail, MD, MPH, DrPH, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 402–7704, *mikhaili@mail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel Triadic Care.

Date: November 29–30, 2021.
Time: 3:30 p.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).
Contact Person: Dario Dieguez, Jr, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 827.3101, *dario.dieguez@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 14, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–20185 Filed 9–16–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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: Neurological Sciences Training Initial Review Group; NST–2 Study Section (NINDS F32, K01, K99).
Date: October 4–6, 2021.
Time: 10:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).
Contact Person: Deanna Lynn Adkins, Ph.D., Scientific Review Officer, Scientific Review Branch, NSC Building, 6001 Executive Blvd., Rockville, MD 20852, (301) 496–9223, *deanna.adkins@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Team-Research BRAIN Circuit Programs.
Date: October 5, 2021.
Time: 10:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).
Contact Person: Tatiana Pasternak, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Rockville, MD 20852, (301) 496–9223, *tatiana.pasternak@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Initial Translation Efforts for Non-addictive Analgesic Therapeutics Development.
Date: October 13, 2021.
Time: 10:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).
Contact Person: Abhignya Subedi, Ph.D., Scientific Review Officer, Scientific Review Branch, Neurological Disorders and Stroke, 6001 Executive Blvd., Rockville, MD 20852, (301) 496–9223, *abhi.subedi@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 13, 2021.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–20114 Filed 9–16–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Office of AIDS Research Advisory Council.

The meeting will be open to the public via NIH Videocast. The URL link to this meeting is *https://videocast.nih.gov/watch=42661.* Individuals who need special assistance or reasonable accommodations should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Office of AIDS Research Advisory Council.
Date: October 28, 2021.
Time: 12:00 p.m. to 4:30 p.m.
Agenda: The fifty-eighth meeting of the Office of AIDS Research Advisory Council (OARAC) will include the OAR Director's Report; updates from the HIV Clinical Guidelines Working Groups of OARAC; updates from NIH HIV-related advisory councils; special invited presentations and discussions on interagency collaboration and strategic planning; and public comment.
Place: Office of AIDS Research, National Institutes of Health, 5601 Fishers Lane, Room 2E61, Rockville, MD 20892 (Virtual Meeting).
Contact Person: Mary T. Glenshaw, Ph.D., M.P.H., Office of AIDS Research, Office of the Director, NIH, 5601 Fishers Lane, Room 2E61, Rockville, MD 20852, 240–669–2958, *OARACInfo@nih.gov.*

Any interested person may file written comments with the committee within 15 days of the meeting by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.oar.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 13, 2021.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–20111 Filed 9–16–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Neurobiology of Decision Making and Chemobrain.

Date: October 7, 2021.

Time: 1:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7846, Bethesda, MD 20892–7846, 301–827–7238, *zhaow@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics: A Study Section.

Date: October 19–20, 2021.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michael L. Bloom, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7804, Bethesda, MD 20892, 301–451–0132, *bloomm2@mail.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group; Development—1 Study Section.

Date: October 20–21, 2021.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Zubaida Saifudeen, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, (301) 827–3029, *zubaida.saifudeen@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Understanding Alzheimer's Disease.

Date: October 20, 2021.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Boris P. Sokolov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–408–9115, *bsokolov@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Behavioral Neuroscience.

Date: October 21–22, 2021.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mei Qin, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, Bethesda, MD 20892, 301–875–2215, *qinmei@csr.nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Digestive System Host Defense, Microbial Interactions and Immune and Inflammatory Disease Study Section.

Date: October 21–22, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aiping Zhao, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, Bethesda, MD 20892–7818, (301) 435–0682, *zhaoa2@csr.nih.gov*.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Emerging Imaging Technologies and Applications Study Section.

Date: October 21–22, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yuanna Cheng, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301)435–1195, *Chengy5@csr.nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Hepatobiliary Pathophysiology Study Section.

Date: October 21–22, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jianxin Hu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2156, Bethesda, MD 20892, 301–827–4417, *jianxinh@csr.nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Modeling and Analysis of Biological Systems Study Section.

Date: October 21–22, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Noffisat Oki, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 240–627–3648, *noffisat.oki@nih.gov*.

Name of Committee: Vascular and Hematology Integrated Review Group; Integrative Vascular Physiology and Pathology Study Section.

Date: October 21–22, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bukhtiar H. Shah, DVM, MS, Ph.D., Scientific Review Officer, Vascular and Hematology IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 806–7314, *shahb@csr.nih.gov*.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Imaging Guided Interventions and Surgery Study Section.

Date: October 21–22, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ileana Hancu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, Bethesda, MD 20817, (301) 402–3911, *ileana.hancu@nih.gov*.

Name of Committee: Applied Immunology and Disease Control Integrated Review Group; Vaccines Against Microbial Diseases Study Section.

Date: October 21–22, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jian Wang, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7812, Bethesda, MD 20892, (301) 435–2778, *wangjia@csr.nih.gov*.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Interventions to Prevent and Treat Addictions Study Section.

Date: October 21–22, 2021.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Miriam Mintzer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, Bethesda, MD 20892, (301) 523–0646, *mintzermz@csr.nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Musculoskeletal Rehabilitation Sciences Study Section.

Date: October 21–22, 2021.

Time: 10:00 a.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Chi-Wing Chow, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 800–A, Bethesda, MD 20892, (301) 402–3912, *chi-wing.chow@nih.gov*.

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group; Hypersensitivity, Autoimmune, and Immune-mediated Diseases Study Section.

Date: October 21–22, 2021.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Deborah Hodge, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4207, MSC 7812, Bethesda, MD 20892, (301)435–1238, *hodged@mail.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Drug Discovery for the Nervous System Study Section.

Date: October 21–22, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov*.

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Cancer Molecular Pathobiology Study Section.

Date: October 21–22, 2021.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Manzoor Zarger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 14, 2021.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–20110 Filed 9–16–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Integrative Myocardial Physiology/Pathophysiology A Study Section.

Date: October 20–21, 2021.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Abdelouahab Aitouche, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4222, MSC 7814, Bethesda, MD 20892, (301) 435–2365, *aitouchea@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–19–264: Imaging, Biomarkers and Digital Pathomics for the Early Detection of Premetastatic Aggressive Cancer.

Date: October 20, 2021.

Time: 1:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lawrence Edward Kagemann, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–6849, *larry.kagemann@nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Learning, Memory and Decision Neuroscience Study Section.

Date: October 21–22, 2021.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Roger Janz, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–8515, *janzr2@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 14, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–20153 Filed 9–16–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 30-Day Comment Request; NIH NeuroBioBank Tissue Access Request Form, National Institute of Mental Health (NIMH)

AGENCY: National Institutes of Health, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Andrew Hooper, NIMH Project Clearance Liaison, Science Policy and Evaluation Branch, Office of Science Policy, Planning and Communications, NIMH, Neuroscience Center, 6001 Executive Boulevard, MSC 9667, Bethesda, Maryland 20892, call (301) 480–8433, or email your request, including your mailing address, to *nimhprapubliccomments@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on July 7, 2021, pages 35815–35816 (86 FR 35815) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institute of Mental Health (NIMH), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection Title: NIH NeuroBioBank Tissue Access Request Form, REVISION, OMB #0925–0723, exp., date 11/30/2021, National Institutes of Health (NIH).

Need and Use of Information Collection: This request serves as notice that the National Institutes of Health (NIH) plans to continue supporting the research community studying neurological, developmental, and psychiatric disorders by coordinating access to human post-mortem brain tissue and related biospecimens stored by our federation of networked brain and tissue repositories known as the NIH NeuroBioBank. To facilitate this process, researchers wishing to obtain brain tissue and biospecimens stored by the NIH NeuroBioBank must continue completing the NIH NeuroBioBank Tissue Access Request Form. The primary use of the information collected by this instrument is to document, track, monitor, and evaluate the appropriate use of the NIH NeuroBioBank resources, as well as to notify interested recipients of updates, corrections, or changes to the system.

OMB approval is requested for 3 years. There are no costs to respondents' other than their time. The total estimated annualized burden hours are 100.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
NIH NeuroBioBank Tissue Access Request Form	Researchers	400	1	15/60	100
Total		400	400		100

Dated: September 13, 2021.

Andrew A. Hooper,

Project Clearance Liaison, National Institute of Mental Health, National Institutes of Health.

[FR Doc. 2021–20076 Filed 9–16–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Early Clinical Trials Targeting Aging Mechanisms.

Date: October 27, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Birgit Neuhuber, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, 301–480–1266 *neuhuber@ninds.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Program Project.

Date: October 29, 2021.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Dario Dieguez, Jr, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301.827.3101, *dario.dieguez@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 14, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–20184 Filed 9–16–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Basic research to inform

vaccine and therapeutic development for non-polio human enteroviruses (NPEV) (R01 Clinical Trial Not Allowed).

Date: October 18, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G42A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Lynn Rust, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G42A, Rockville, MD 20852, (240) 669–5069, *lrust@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 13, 2021.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–20108 Filed 9–16–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group Genome Research Study Section.

Date: November 4–5, 2021.

Time: 8:00 a.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: 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.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: September 14, 2021.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–20186 Filed 9–16–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Clinical Studies.

Date: October 14, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yun Mei, MD, Scientific Review Officer, Scientific Review Branch, Natl Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite #670, Bethesda, MD 20892, (301) 827–4639, *yun.mei@nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: September 13, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–20071 Filed 9–16–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: October 13, 2021.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G58, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Anuja Mathew, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G58, Rockville, MD 20852, 301–761–6911, *anuja.mathew@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 13, 2021.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–20109 Filed 9–16–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Allergy, Immunology, and Transplantation Research Committee; Allergy, Immunology, and Transplantation Research Committee.

Date: October 14–15, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G31, Rockville, MD 20892 (Virtual Meeting).

Contact Person: James T. Snyder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities/ Room 3G31B, National Institutes of Health, NIAID, 5601 Fishers Lane, Room 3G31, Bethesda, MD 20892–9834, (240) 669–5060, *james.snyder@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 13, 2021.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–20107 Filed 9–16–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0114]

Crewman's Landing Permit (CBP Form I–95)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than October 18, 2021) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice 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: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 86 FR Page 31331) on June 11, 2021, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Crewman's Landing Permit.

OMB Number: 1651–0114.

Form Number: CBP Form I–95.

Current Actions: Extension.

Type of Review: Extension (with change).

Affected Public: Businesses.

Abstract: CBP Form I–95, *Crewman's Landing Permit,* is prepared and presented to CBP by the master or agent of vessels and aircraft arriving in the United States for non-immigrant crewmembers applying for landing privileges. This form is provided for by 8 CFR 251.1(c) which states that, with certain exceptions, the master, captain, or agent shall present this form to CBP for each non-immigrant crewmember on board. In addition, pursuant to 8 CFR 252.1(e), CBP Form I–95 serves as the physical evidence that a non-immigrant crewmember has been granted a conditional permit to land temporarily, and it is also a prescribed registration form under 8 CFR 264.1 for crewmembers arriving by vessel or air. CBP Form I–95 is authorized by Section 252 of the Immigration and Nationality Act (8 U.S.C. 1282) and is accessible at: *https://www.cbp.gov/sites/default/files/assets/documents/2018-Nov/CBP%20Form%20I-95.pdf.*

Type of Information Collection: CBP Form I–95.

Estimated Number of Respondents: 433,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 433,000.

Estimated Time per Response: 0.067 Hours.

Estimated Total Annual Burden Hours: 29,011.

Dated: September 14, 2021.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2021–20169 Filed 9–16–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0055]

Harbor Maintenance Fee

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than October 18, 2021) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice 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: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 86 FR 35816) on July 07, 2021, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Harbor Maintenance Fee.

OMB Number: 1651–0055.

Form Number: CBP Form 349 and 350.

Current Actions: Extension with an increase in burden hours.

Type of Review: Extension (with change).

Affected Public: Businesses.

Abstract: The Harbor Maintenance Fee (HMF) and Trust Fund is used for the operation and maintenance of certain U.S. channels and harbors by the Army Corps of Engineers. U.S. Customs and Border Protection (CBP) is required to collect the HMF from importers, domestic shippers, and passenger vessel operators using federal navigation projects. *See* 19 CFR 24.24. Commercial cargo loaded on or unloaded from a commercial vessel is subject to a port use fee of 0.125 percent of its value if the loading or unloading occurs at a port that has been designated by the Army Corps of Engineers. 19 CFR 24.24(a). The HMF also applies to the total ticket value of embarking and disembarking passengers and on cargo admissions into a Foreign Trade Zone (FTZ). *See* 19 CFR 24.24(e)(2)(iii).

CBP Form 349, *Harbor Maintenance Fee Quarterly Summary Report,* and CBP Form 350, *Harbor Maintenance Fee Amended Quarterly Summary Report* are completed by domestic shippers, foreign trade zone applicants, and passenger vessel operators and submitted with payment to CBP. 19 CFR 24.24(e).

CBP uses the information collected on CBP Forms 349 and 350 to verify that the fee collected is timely and accurately submitted. These forms are authorized by the Water Resources Development Act of 1986 (26 U.S.C. 4461, *et seq.*) and provided for by 19 CFR 24.24, which also includes the list of designated ports. CBP Forms 349 and 350 are accessible at *http://www.cbp.gov/newsroom/publications/forms* or they may be completed and filed electronically at *www.pay.gov.*

Type of Information Collection: CBP Form 349.

Estimated Number of Respondents: 846.

Estimated Number of Annual Responses per Respondent: 4.

Estimated Number of Total Annual Responses: 3,384.

Estimated Time per Response: 0.5 hours.

Estimated Total Annual Burden Hours: 1692.

Type of Information Collection: CBP Form 350.

Estimated Number of Respondents: 23.

Estimated Number of Annual Responses per Respondent: 4.

Estimated Number of Total Annual Responses: 92.

Estimated Time per Response: 0.5 hours.

Estimated Total Annual Burden Hours: 46.

Type of Information Collection: Record Keeping.

Estimated Number of Respondents: 869.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 869.

Estimated Time per Response: 0.166 hours.

Estimated Total Annual Burden Hours: 144.

Dated: September 14, 2021.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2021–20166 Filed 9–16–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7038–N–19]

60-Day Notice of Proposed Information Collection: FHA-Insured Mortgage Loan Servicing Involving the Loss Mitigation Programs; OMB Control No. 2502–0589

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* November 16, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at (800) 877–8339 (this is a toll-free number). Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: FHA-Insured Mortgage Loan Servicing Involving the Loss Mitigation Program.

OMB Approval Number: 2502–0589.

Type of Request: Revision.

Form Numbers: HUD–27011, HUD–90035, HUD–90041, HUD–90045, HUD–90051, HUD–90052.

Description of the need for the information and proposed use: FHA's Loss Mitigation program options (24 CFR 203.501) and incentives efforts provide mortgagees with reimbursement for using tools to bring a delinquent FHA-insured mortgage loan current in as short a time as possible, to provide an alternative to foreclosure to the extent possible, and to minimize losses to the Mutual Mortgage Insurance Fund. Home retention options promote reinstatement of the mortgage, allowing the mortgagor to retain home ownership, while disposition options assist mortgagors who cannot recover with an alternative to foreclosure. The HUD forms used are part of the collection effort for non-performing insured mortgage loans.

Respondents: Mortgagees or Mortgagors.

Estimated Number of Respondents: 412,966.

Estimated Number of Responses: 1,254,958.

Frequency of Response: On occasion.

Average Hours per Response: 1.38 hours.

Total Estimated Burdens: 1,736,478.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Janet M. Golrick,

Acting Chief of Housing, H.

[FR Doc. 2021–20127 Filed 9–16–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7040–N–10]

60-Day Notice of Proposed Information Collection: Operating Fund Shortfall Program Financial Reporting and Monitoring; OMB Control No.: 2577–New

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act (PRA), HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* November 16, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5564 (this is not a toll-free number) or email *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; telephone 202–402–3374. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents

submitted to OMB may be obtained from Ms. Rogers.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: OpFund Shortfall Program Financial Reporting and Monitoring.

OMB Control Number: 2577–New.

Type of Request: New.

Agency Form Numbers: HUD–XXXXX, HUD–XXXXX, HUD–XXXXX, HUD–XXXXX, HUD–52574.

Description of the Need for the Information and Proposed Use: The Shortfall Program has been in operation for two years and was created through annual Appropriations laws providing a $25 million set-aside in the Public Housing Fund to assist Public Housing Agencies (PHAs) experiencing or at risk of financial shortfalls. The program targets PHAs with the lowest Public Housing reserves. Funding is allocated to raise PHAs' reserves to two months of expenses. The calculation that determines this value is outlined in Section 4 of the Shortfall Notice: PIH–2021–12. Along with the infusion of funds, PHAs create Improvement Plans to improve their financial situation and address financial issues. However, without a Paperwork Reduction Act (PRA) approved information collection, it is difficult to monitor the PHAs financial changes and successes in an expeditious way. OMB requested that PIH begin to collect enough information from PHAs to evaluate the efficacy of the program in improving PHA's financial situation. This PRA information collection is being submitted to improve the effectiveness of the program (through monitoring and risk management) which ultimately helps the PHAs reach sustainable financial success. This PRA information collection will include a short-form budget for PHAs to report their budget and actuals through the year so that financial and operational performance can be evaluated; an Action Item Template, which will increase accountability towards making financial improvements; and Shortfall Program Application and Appeal forms. These forms will be accessible to PHA and HUD staff through a web-based portal to increase operational efficiency.

Respondents (i.e., affected public): Public Housing Agencies.

Estimated Number of Respondents: 3,300.

Estimated Number of Responses: 4,274.

Frequency of Response: Varies.

Average Hours per Response: .55.

Total Estimated Burdens: 537.5.

Burden hours for form(s) showing zero burden hours in this collection are reflected in the OMB approval number cited or do not have a reportable burden.

Information collection	Number of respondents	* Average number of reponses per respondent	Total annual responses	Burden hours/minutes per response	Total hours	Hourly cost	Total annual cost
HUD–XXXXX (y) (Mini Shortfall Budget)	194	3	582	0.5	291	$34.86	$10,144.26
HUD–XXXXX(z) (Action Item Template)	194	1	194	1	194	34.86	6,762.84
HUD–52574 (OMB 2577–0026)	3,300	1	3,300	0	0	0	0.00
HUD–XXXXX(a) (Shortfall Application)	194	1	194	0.25	48.5	34.86	1,690.71
HUD–XXXXX(b) (Shortfall Appeal)	4	1	4	1	4	34.86	139.44
Totals	3,300	varies	4,274	2.75	537.5		18,737.25

B. Solicitation of Public Comment

This notice is soliciting comments from members of the pubic and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of burden of the proposed collection of information;

(3) Ways to enhance the quality, utility and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: September 10, 2021.

Laura Miller-Pittman,

Chief, Office of Policy, Programs, and Legislative Initiatives.

[FR Doc. 2021–20132 Filed 9–16–21; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLHQ310000.L13100000.PP0000; OMB Control No. 1004–0137]

Agency Information Collection Activities; Onshore Oil and Gas Operations and Production

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Land Management (BLM) has submitted to the Office of Management and Budget (OMB) a request to renew an information collection.

DATES: Interested persons are invited to submit comments on or before October 18, 2021.

ADDRESSES: Written comments and recommendations for the proposed Information Collection Request (ICR) 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: To request additional information about this ICR, contact Jennifer Spencer by email at *j35spenc@blm.gov,* or by telephone at 307–775–6261. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA (44 U.S.C. 3501 *et seq.* and 5 CFR 1320.8(d)(1)), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on June 24, 2021 (86 FR 33347). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Under the below listed Federal and Indian mineral leasing statutes authorize the BLM to grant and manage onshore oil and gas leases on Federal and Indian (except Osage Tribe) lands:

- Chapter 3A, Subchapter I of the Mineral Leasing Act, 30 U.S.C. 181–196;
- Chapter 3A, Subchapter IV of the Mineral Leasing Act, 30 U.S.C. 223–236b;
- The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 360;
- The Federal Oil and Gas Royalty Management Act, 30 U.S.C. 1701–1759; and
- The Federal Land Policy and Management Act, 43 U.S.C. 1701–1787.

In order to fulfill its responsibilities under these statutes, the BLM needs to perform the information collection (IC) activities set forth in the regulations at 43 CFR parts 3160 and 3170, and in onshore oil and gas orders promulgated in accordance with 43 CFR 3164.1. OMB control number 1004–0137 is scheduled to expire on October 31, 2021. The BLM request that OMB renew this OMB control number of an additional three (3) years.

Title of Collection: Onshore Oil and Gas Operations and Production (43 CFR parts 3160 and 3170).

OMB Control Number: 1004–0137.

Form Numbers: BLM Form 3160–003; BLM Form 3160–004; and BLM Form 3160–005.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Oil and gas operators on public lands and some Indian lands.

Total Estimated Number of Annual Respondents: 7,500.

Total Estimated Number of Annual Responses: 301,663.

Estimated Completion Time per Response: Varies from 45 minutes to 40 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 1,835,888.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion; One-time; and Monthly.

Total Estimated Annual Non-hour Burden Cost: $31,080,000.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Signed:

Darrin King,

Information Collection Clearance Officer.

[FR Doc. 2021–20177 Filed 9–16–21; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

[DOI–2021–0004; PPWOVPADP5 PPMPRLE1Z.Y00000]

Privacy Act of 1974; System of Records

AGENCY: National Park Service, Interior.

ACTION: Rescindment of a system of records notice.

SUMMARY: The Department of the Interior (DOI) is issuing a public notice of its intent to rescind the National Park Service (NPS) Privacy Act system of records, INTERIOR/NPS–19, Case Incident Reporting System, as these records are covered by an existing Department-wide system of records notice (SORN). This rescindment will eliminate an unnecessary duplicate notice and promote the overall streamlining and management of DOI Privacy Act systems of records.

DATES: These changes take effect on September 17, 2021.

ADDRESSES: You may send comments identified by docket number [DOI–2021–0004] 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–2021–0004] 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–2021–0004]. 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.*

You should be aware your entire comment including your personally identifiable information, such as your address, phone number, email address, or any other personal information in your comment, may be made publicly available at any time. While you may request to withhold your personally identifiable information from public review, we cannot guarantee we will be able to do so.

FOR FURTHER INFORMATION CONTACT: (1) Edward Zawislak, Administrative Officer, National Park Service, 1100 Ohio Drive SW, Washington DC 20242, *edward_zawislak@nps.gov* or 202–781–7085; (2) John Leonard, Chief, Division of Law Enforcement & Emergency Services, National Park Service, 1849 C Street NW, Suite 2468, Washington, DC 20240, *john_leonard@nps.gov* or (202) 513–7162; or (3) Felix Uribe, Associate Privacy Officer, National Park Service, 12201 Sunrise Valley Drive, Reston, VA 20192, *nps_privacy@nps.gov* or (202) 354–6925.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the NPS is rescinding the INTERIOR/NPS–19, Case Incident Reporting System, SORN. This system helped NPS manage incidents, accidents, criminal investigations, and support law enforcement activities. DOI published a Department-wide SORN, INTERIOR/DOI–10, Incident Management, Analysis and Reporting System, 79 FR 31974 (June 3, 2014), which covers all DOI bureau and office law enforcement organizations. NPS maintains all investigations and law enforcement related records under the Department-wide SORN. Therefore, NPS is rescinding the SORN for INTERIOR/NPS–19, Case Incident Reporting System, to eliminate an unnecessary duplicate notice in accordance with the Office of Management and Budget Circular A–108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.*

Rescinding the INTERIOR/NPS–19, Case Incident Reporting System, SORN will have no adverse impacts on individuals as the records are covered under INTERIOR/DOI–10, Incident Management, Analysis and Reporting System. Individuals may continue to seek access to or correction of their records under the DOI–10 SORN. This rescindment will also promote the overall streamlining and management of DOI Privacy Act systems of records. This notice hereby rescinds the SORN for INTERIOR/NPS–19, Case Incident Reporting System, as identified below.

SYSTEM NAME AND NUMBER:

INTERIOR/NPS–19, Case Incident Reporting System.

HISTORY:

70 FR 1274 (January 6, 2005); modification published 73 FR 63992 (October 28, 2008).

Teri Barnett,

Departmental Privacy Officer, Department of the Interior.

[FR Doc. 2021–20093 Filed 9–16–21; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[DOI–2021–0007; 212E1700D2 EECC000000 ET1EX0000.G40000]

Privacy Act of 1974; System of Records

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior (DOI) is issuing a public notice of its intent to modify the Bureau of Safety and Environmental Enforcement (BSEE) system of records, BSEE–01, Investigations Case Management System (CMS). DOI is publishing this revised system of records notice to propose a new breach routine use; modify four existing routine uses; update the system manager address; remove references to a cloud system; and provide general and administrative updates in accordance with the Office of Management and Budget Circular (OMB) A–108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.*

DATES: This modified system will be effective upon publication. New or modified routine uses will be effective October 18, 2021. Submit comments on or before October 18, 2021.

ADDRESSES: You may send comments identified by docket number [DOI–2021–0007] 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–2021–0007] 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–2021–0007]. 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: Rowena Dufford, Associate Privacy Officer, Bureau of Safety and Environmental Enforcement, 45600 Woodland Road, Sterling, VA 20166, *privacy@bsee.gov* or 703–787–1257.

SUPPLEMENTARY INFORMATION:

I. Background

BSEE maintains the BSEE–01, Investigations Case Management System (CMS), system of records. The purpose of this system of records is to manage, track and report civil administrative investigations related to operations on the Outer Continental Shelf (OCS). BSEE conducts investigations on safety concerns, environmental risks and incidents which includes but is not limited to reportable injuries, the loss or damage of property, and possible violations of Federal laws and regulations.

While BSEE conducts civil administrative investigations rather than criminal investigations the Bureau may make referrals of possible criminal activity to internal and external law enforcement organizations as appropriate for investigation. Records include known or suspected civil violations; information related to possible criminal activities; incident-related information and observations from other sources; protection efforts; information to justify funding requests and expenditures; investigator training; referrals and/or recommendations related to incident investigations; and evidence.

Incident and non-incident data related to activity occurring on the OCS is collected in support of investigations, regulatory enforcement, homeland security, and security (physical, personnel, stability, environmental, and

industrial) activities. This may include data documenting investigation activities, enforcement recommendations, recommendation results, property damage, injuries and fatalities, and analytical or statistical reports. CMS allows for BSEE management to make informed decisions on recommendations for enforcement, civil penalties, and other administrative actions.

BSEE is publishing this notice to update the system manager address, revise the policies and practices for storage of records section, remove use of a cloud provider in the administrative, technical and physical safeguards section, and make administrative updates to comply with the Office of Management and Budget (OMB) Circular A–108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.*

Additionally, BSEE is changing the routine uses from a numeric to an alphabetic list and modifying routine uses A, B, and I to provide additional clarification on external organizations or comply with Federal requirements. Routine use A was modified to further clarify disclosures to the Department of Justice or other Federal agencies when necessary in relation to litigation or judicial proceedings. Modified routine use B clarifies disclosures to a congressional office to respond to or resolve an individual's request made to that office. Modified routine use I allows BSEE to share information with an expert, consultant, grantee, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system. BSEE is also proposing to modify routine use J and add new routine use K to allow BSEE to share information with appropriate Federal agencies or entities when reasonably necessary to respond to a breach of personally identifiable information and to prevent, minimize, or remedy the risk of harm to individuals or the Federal Government, or assist an agency in locating individuals affected by a breach in accordance with OMB Memorandum M–17–12, *Preparing for and Responding to a Breach of Personally Identifiable Information.*

This system contains investigatory records related to law enforcement activities that are exempt from certain provisions of the Privacy Act, 5 U.S.C. 552a(k)(2). On January 10, 2020, DOI published a final rule in the **Federal Register** at 85 FR 1282 to amend the DOI Privacy Act regulations at 43 CFR 2.254. This allows DOI, on a case-by-case basis, to withhold records from individuals seeking their records.

II. Privacy Act

The Privacy Act of 1974, as amended, embodies fair information practice principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate individuals' records. 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 is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act regulations at 43 CFR part 2, subpart K, and following the procedures outlined in the Records Access, Contesting Record, and Notification Procedures sections of this notice.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the existence and character of each system of records that the agency maintains and the routine uses of each system. The revised INTERIOR/BSEE–01, Investigations Case Management System, system of records notice is published in its entirety below. In accordance with 5 U.S.C. 552a(r), DOI has provided a report of this system of records to OMB and to Congress.

III. Public Participation

You should be aware your entire comment including your personally identifiable information, such as your address, phone number, email address, or any other personal information in your comment, may be made publicly available at any time. While you may request to withhold your personally identifiable information from public review, we cannot guarantee we will be able to do so.

SYSTEM NAME AND NUMBER:

INTERIOR/BSEE–01, Investigations Case Management System (CMS).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records in this system are maintained and centrally managed by the Department of the Interior, Bureau of Safety and Environmental Enforcement (BSEE), 1849 C Street NW, Washington, DC 20240. Records are also located at BSEE regional offices and regional sub-offices, and at DOI contractor locations. A current listing of these offices may be obtained by writing to the System Manager or by visiting the BSEE website at *http://www.bsee.gov.*

SYSTEM MANAGER(S):

CMS System Administrator, Bureau of Safety and Environmental Enforcement, National Investigations Program, 45600 Woodland Rd., Mail Stop VAE–DIR–SIID, Sterling, VA 20166.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Outer Continental Shelf Lands Act of 1953, 43 U.S.C. 1331–1356b; and Oil and Gas and Sulphur Operations in the Outer Continental Shelf, 30 CFR 250.

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the CMS system of records is to conduct and document incident investigations related to operations on the OCS. CMS is used to manage known and suspected civil violations; capture, integrate, and share incident-related information and observations from other sources; measure performance of investigative programs and management of investigations; meet incident reporting requirements; analyze and prioritize investigative efforts; provide information to justify funding requests and expenditures; provide employee training; provide referrals to appropriate criminal law enforcement agencies for individuals suspected of committing crimes on or in support of activities conducted on the OCS; collect and preserve evidence; and investigate and prevent injuries on the OCS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered in the system include current and former BSEE employees, potential employees, and contractors; other employees and contractors of Federal, tribal, state, and local law enforcement organizations; complainants, informants, suspects, and witnesses; members of the general public, including individuals and/or groups of individuals involved with incidents related to operations on the OCS; and individuals or corporations being investigated due to their involvement in incidents occurring on the OCS.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes incident reports, investigative activity reports, personnel records, investigative training records, and records related to incidents

occurring on the OCS. Records may contain the following information: Names, Social Security numbers, gender, date of birth, place of birth, citizenship status, race or ethnicity, home and work addresses, personal and official phone numbers, personal and official email addresses, emergency contact information, other contact information, medical information, work history, educational history, affiliations, employer information, associated case or activity number, identification numbers assigned to individuals, and other data that may be included in records compiled during investigations.

Incident reports and records may include attachments such as photos, videos, sketches, audio recordings, email and text messages, medical reports, personnel records, written statements, witness interviews, depositions, evidence and information obtained in the course of an investigation, evidence in support of the Action Referral Memoranda and Case Closure Memoranda, administrative agreements, action determinations, company documentation, and other documents related to incidents occurring on the OCS. Incident reports may also include information concerning criminal activity and documentation related to the response and outcome of an incident. Records in this system also contain information concerning Federal, tribal, state and local law enforcement officers such as an officer's name, contact information, station, and career history.

This system may also contain the names and addresses of business entities, which are not subject to the Privacy Act. However, records pertaining to individuals acting on behalf of corporations and other business entities may reflect personal information that is covered by this system of records notice.

RECORD SOURCE CATEGORIES:

Sources of information in the system include Department, bureau, office and program officials, employees, contractors, and other individuals who are associated with or represent DOI; officials from other Federal, tribal, state and local law enforcement organizations, including DOJ, the Federal Bureau of Investigation, and the Department of Homeland Security, among others; and complainants, informants, suspects, victims, and witnesses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOI as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

(1) DOI or any component of DOI;

(2) Any other Federal agency appearing before the Office of Hearings and Appeals;

(3) Any DOI employee or former employee acting in his or her official capacity;

(4) Any DOI employee or former employee acting in his or her individual capacity when DOI or DOJ has agreed to represent that employee or pay for private representation of the employee; or

(5) The United States Government or any agency thereof, when DOJ determines that DOI is likely to be affected by the proceeding.

B. To a congressional office when requesting information on behalf of, and at the request of, the individual who is the subject of the record.

C. To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible with the reason for which the records are collected or maintained.

D. To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

E. To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

F. To Federal, state, territorial, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

G. To representatives of the National Archives and Records Administration (NARA) to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

H. To state, territorial and local governments and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

I. To an expert, consultant, grantee, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

J. To appropriate agencies, entities, and persons when:

(1) DOI suspects or has confirmed that there has been a breach of the system of records;

(2) DOI has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOI (including its information systems, programs, and operations), the Federal Government, or national security; and

(3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DOI's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

K. To another Federal agency or Federal entity, when DOI determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in:

(1) Responding to a suspected or confirmed breach; or

(2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

L. To the Office of Management and Budget (OMB) during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

M. To the Department of the Treasury to recover debts owed to the United States.

N. To the news media and the public, with the approval of the Public Affairs Officer in consultation with counsel and

the Senior Agency Official for Privacy, where there exists a legitimate public interest in the disclosure of the information, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

O. To DOJ, the Federal Bureau of Investigation, the Department of Homeland Security, and other Federal, state and local law enforcement agencies for the purpose of reporting possible violations of Federal laws and regulations, referring criminal related activities, and providing information exchange on law enforcement activity.

P. To agency contractors, grantees, or volunteers for DOI or other Federal agencies that assist in the performance of a contract, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform the activity.

Q. To any of the following entities or individuals for the purpose of providing information on incident investigations, personal injuries, or the loss or damage of property:

(1) Individuals involved in such incidents;

(2) Persons injured in such incidents;

(3) Owners of property damaged, lost or stolen in such incidents, and/or representatives, administrators of estates, and/or attorneys.

The release of information under these circumstances should only occur when it will not interfere with ongoing investigations or law enforcement proceedings; risk the health or safety of an individual; or reveal the identity of an informant or witness that has received an explicit assurance of confidentiality. Also, Social Security numbers and other sensitive identifying personal information should not be released under these circumstances unless this information belongs to the individual requestor.

R. To any criminal, civil, or regulatory authority (whether Federal, state, territorial, local, tribal or foreign) for the purpose of providing background search information on individuals for legally authorized purposes, including but not limited to background checks on individuals residing in a home with a minor or individuals seeking employment opportunities requiring background checks.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in electronic media and paper files. All records are accessed only by authorized personnel who have a need to access the records in the performance of their official duties. Paper records are contained in file folders and stored in locked file cabinets. Records obtained in a paper format and converted into electronic files in CMS may be temporarily stored or accessed on DOI network computers, email systems, and approved removable hard drives.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information may be retrieved by first name, middle name, or last name, home and work addresses, personal and official phone numbers, personal and official email addresses, employer information, and associated case or activity number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are maintained under BSEE Bucket 5—Regulatory Oversight and Stewardship (N1–473–12–5), which has been approved by NARA. Records maintained under Item 5F(2)(a), Major Incident Investigative Records, include final reports that document major incidents requiring investigative panels and other reports selected as significant by BSEE, and have a permanent retention. Electronic records are transferred to NARA 15 years after cut-off, and hardcopy reports are transferred to NARA 25 years after cut-off. Records maintained under Item 5F(2)(b), All Other Incident Investigative and Related Records, include records that do not result in the appointment of a panel or are not selected as significant by BSEE. These records have a temporary disposition and are destroyed 25 years after cut-off. Other administrative records are maintained under BSEE Bucket-1, Administrative Records (N1–473–12–001), which has been approved by NARA. Records maintained under Item IG(1), Administrative Function Files/ Audits and Investigation Files, have a temporary disposition, and are cut off at the end of the fiscal year when activity is completed and destroyed 10 years after cut off. Approved disposition methods for temporary records include shredding or pulping paper records, and erasing or degaussing electronic records in accordance with NARA guidelines and Departmental policy.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The records contained in this system are safeguarded in accordance with 43 CFR 2.226 and other applicable security rules and policies. During normal hours of operation, paper records are maintained in locked file cabinets under the control of authorized personnel. Computerized records systems follow the National Institute of Standards and Technology standards as developed to comply with the Privacy Act of 1974, 5 U.S.C. 552a; Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521; Federal Information Security Modernization Act of 2014, 44 U.S.C. 3551–3558; and the Federal Information Processing Standards 199: Standards for Security Categorization of Federal Information and Information Systems. Computer servers in which electronic records are stored are located in secured contractor facilities with physical, technical and administrative levels of security to prevent unauthorized access to the network and information assets. Security controls include encryption, firewalls, audit logs, and network system security monitoring.

Access to records in the system is limited to authorized personnel who have a need to access the records in the performance of their official duties. Electronic data is protected through user identification such as usernames, passwords, database permissions and software controls. These security measures establish different access levels for different types of users. Each user's access is restricted to only the functions and data necessary to perform their job responsibilities.

System administrators and authorized users are trained and required to follow established internal security protocols, complete all security, privacy, and records management training, and sign the DOI Rules of Behavior. Contract employees with access to the system must also complete mandatory security and privacy training, sign DOI Rules of Behavior, and are monitored by their Contracting Officer Representative and the agency Security Manager.

RECORD ACCESS PROCEDURES:

DOI has exempted portions of this system from the access procedures of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). DOI will make access determinations on a case by case basis.

An individual requesting records on himself or herself should send a signed, written inquiry to the System Manager identified above. The request should describe the records sought as specifically as possible. The request envelope and letter should both be

clearly marked ''PRIVACY ACT REQUEST FOR ACCESS.'' A request for access must meet the requirements of 43 CFR 2.238.

CONTESTING RECORD PROCEDURES:

DOI has exempted portions of this system from the amendment procedures of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). DOI will make amendment determinations on a case by case basis.

An individual requesting corrections or the removal of material from his or her records should send a signed, written request to the System Manager identified above. A request for corrections or removal must meet the requirements of 43 CFR 2.246.

NOTIFICATION PROCEDURES:

DOI has exempted portions of this system from the notification procedures of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). DOI will make notification determinations on a case by case basis.

An individual requesting notification of the existence of records on himself or herself should send a signed, written inquiry to the System Manager identified above. The request envelope and letter should both be clearly marked ''PRIVACY ACT INQUIRY.'' A request for notification must meet the requirements of 43 CFR 2.235.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

This system contains civil and administrative law enforcement investigatory records that are exempt from certain provisions of the Privacy Act, 5 U.S.C. 552a(k)(2). Pursuant to 5 U.S.C. 552a(k)(2) of the Privacy Act, DOI has exempted portions of this system from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). In accordance with 5 U.S.C. 553(b), (c) and (e), DOI promulgated a rule, which was published in the **Federal Register** at 85 FR 1282 (January 10, 2020), to amend the DOI Privacy Act regulations at 43 CFR 2.254 to claim exemptions for this system.

Additionally, the CMS may contain records from numerous sources compiled for investigatory purposes. To the extent that copies of records from other source systems of records are exempt from certain provisions of the Privacy Act, DOI claims the same exemptions for those records that are claimed for the original primary systems of records from which they originated.

The exemptions from one or more provisions of the Privacy Act may be waived on a case-by-case basis where a release would not interfere with or adversely affect investigations or enforcement activities.

HISTORY:

81 FR 67386 (September 30, 2016).

Teri Barnett,

Departmental Privacy Officer, Department of the Interior.

[FR Doc. 2021–20094 Filed 9–16–21; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Richard D. Fairbank; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Richard D. Fairbank,* Civil Action 1:21–cv–02325. On September 2, 2021, the United States filed a Complaint alleging that Richard D. Fairbank violated the premerger notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a, in connection with the acquisition of voting securities of Capital One Financial Corporation. The proposed Final Judgment, filed at the same time as the Complaint, requires Richard D. Fairbank to pay a civil penalty of $637,950.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments in English should be directed to Maribeth Petrizzi, Special Attorney, United States, c/o Federal Trade Commission, 600 Pennsylvania Avenue NW, CC–8416, Washington, DC 20580 or by email to *bccompliance@ftc.gov.*

Suzanne Morris,

Chief, Premerger and Division Statistics.

United States District Court for the District of Columbia

United States of America, c/o Department of Justice, Washington, DC 20530, Plaintiff, v. *Richard D. Fairbank, c/o Capital One Financial Corporation, 1680 Capital One Drive, McLean, VA 22102,* Defendant.

Civil Action No. 1:21–cv–02325

Judge: Rudolph Contreas

Complaint for Civil Penalties for Failure To Comply With the Premerger Reporting and Waiting Requirements of the Hart-Scott Rodino Act

The United States of America, acting under the direction of the Attorney General of the United States and at the request of the United States Federal Trade Commission, brings this civil antitrust action to obtain monetary relief in the form of civil penalties against Defendant Richard D. Fairbank (''Fairbank''). The United States alleges as follows:

I. Nature of the Action

1. Fairbank violated the notice and waiting period requirements of Section 7A of the Clayton Act, (15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ''HSR Act'' or ''Act''), with respect to the acquisition of voting securities of Capital One Financial Corporation (''COF'') in 2018.

II. Jurisdiction and Venue

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 7A(g) of the Clayton Act, 15 U.S.C. 18a(g), and 28 U.S.C. 1331, 1337(a), 1345, and 1355, and over Defendant by virtue of Defendant's consent, in the Stipulation relating hereto, to the maintenance of this action and entry of the Final Judgment in this District.

3. Venue is proper in this District by virtue of Defendant's consent, in the Stipulation relating hereto, to the maintenance of this action and entry of the Final Judgment in this District.

III. The Defendant

4. Defendant Fairbank is a natural person with his principal office and place of business at 1680 Capital One Drive, McLean, VA 22101. Fairbank is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. 18a(a)(1). At all times relevant to this complaint,

Fairbank had sales or assets in excess of $16.9 million.

IV. Other Entity

5. COF is a corporation organized under the laws of Delaware with its principal place of business at 1680 Capital One Drive, McLean, VA 22101. COF is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. 18a(a)(1). At all times relevant to this complaint, COF had sales or assets in excess of $168.8 million.

V. The Hart-Scott-Rodino Act and Rules

6. The HSR Act requires certain acquiring persons and certain persons whose voting securities or assets are acquired to file notifications with the United States Department of Justice and the Federal Trade Commission (collectively, the ''federal antitrust agencies'') and to observe a waiting period before consummating certain acquisitions of voting securities or assets. 15 U.S.C. 18a(a) and (b). These notification and waiting period requirements apply to acquisitions that meet the HSR Act's size of transaction and size of person thresholds, which have been adjusted annually since 2004. The size of transaction threshold is met for transactions valued over $50 million, as adjusted ($84.4 million for most of 2018). In addition, there is a separate filing requirement for transactions in which the acquirer will hold voting securities in excess of $100 million, as adjusted ($168.8 million in 2018), and for transactions in which the acquirer will hold voting securities in excess of $500 million, as adjusted ($843.9 million in 2018). With respect to the size of person thresholds, the HSR Act requires one person involved in the transaction to have sales or assets in excess of $10 million, as adjusted ($16.9 million in 2018), and the other person to have sales or assets in excess of $100 million, as adjusted ($168.8 million in 2018).

7. The HSR Act's notification and waiting period requirements are intended to give the federal antitrust agencies prior notice of, and information about, proposed transactions. The waiting period is also intended to provide the federal antitrust agencies with the opportunity to investigate a proposed transaction and to determine whether to seek an injunction to prevent the consummation of a transaction that may violate the antitrust laws.

8. Pursuant to Section (d)(2) of the HSR Act, 15 U.S.C. 18a(d)(2), rules were promulgated to carry out the purposes of the HSR Act. 16 CFR 801–03 (''HSR Rules''). The HSR Rules, among other things, define terms contained in the HSR Act.

9. Pursuant to Section 801.13(a)(1) of the HSR Rules, 16 CFR 801.13(a)(1), ''all voting securities of [an] issuer which will be held by the acquiring person after the consummation of an acquisition''—including any held before the acquisition—are deemed held ''as a result of'' the acquisition at issue.

10. Pursuant to Sections 801.13(a)(2) and 801.10(c)(1) of the HSR Rules, 16 CFR 801.13(a)(2) and § 801.10(c)(1), the value of voting securities already held is the market price, defined to be the lowest closing price within 45 days prior to the subsequent acquisition.

11. Section 802.21 of the HSR Rules, 16 CFR 802.21, provides that, once a person has filed under the HSR Act and the waiting period has expired, the person can acquire additional voting securities of the same issuer without filing a new notification for five years from the expiration of the waiting period, so long as the value of the person's holdings do not exceed a threshold higher than was indicated in the filing (''802.21 exemption'').

12. Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), provides that any person, or any officer, director, or partner thereof, who fails to comply with any provision of the HSR Act is liable to the United States for a civil penalty for each day during which such person is in violation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), the dollar amounts of civil penalties listed in Federal Trade Commission Rule 1.98, 16 CFR 1.98, are adjusted annually for inflation; the maximum amount of civil penalty in effect at the time of Fairbank's corrective filing was $42,530 per day. 84 FR 3980 (February 14, 2019).

VI. Defendant's Prior Violation of the HSR Act

13. In 1999 and 2004, Fairbank acquired voting securities of COF that resulted in holdings exceeding the then applicable HSR notification thresholds. Although he was required to do so, Fairbank did not file under the HSR Act prior to acquiring COF voting securities in 1999 and 2004.

14. On February 12, 2008, Fairbank made a corrective filing under the HSR Act for the acquisitions of COF voting securities he had made in 1999 and 2004. In a letter accompanying the corrective filing, Fairbank acknowledged that the transactions were reportable under the HSR Act but asserted that the failure to file and observe the waiting period was inadvertent.

15. Fairbank outlined in his letter a system he would implement to ensure that future reportable acquisitions would be identified and the required HSR notifications filed. The Commission did not seek civil penalties against Fairbank for the 1999 and 2004 COF acquisitions.

VII. Defendant's Violation of the HSR Act

16. Fairbank is the Chief Executive Officer of COF and, as a result of holding this position, receives stock options as well as performance stock units (''PSUs'') as a part of his compensation package. On February 5, 2013, due to vesting PSUs, Fairbank filed an HSR Notification for an acquisition of COF voting securities that would result in holdings exceeding the $100 million threshold as adjusted. The HSR Act's waiting period on this filing expired on March 7, 2013. Fairbank was permitted under the HSR Act to acquire additional voting securities of COF until five years after the 2013 filing waiting period expired (*i.e.,* March 6, 2018) without making another HSR Act filing so long as he did not exceed the next highest threshold, $500 million, as adjusted.

17. On March 8, 2018, over five years after expiration of the waiting period for the February 5, 2013 filing, Fairbank acquired 101,148 shares of COF due to vesting PSUs. Even though this acquisition did not bring Fairbank's holdings over the next highest threshold ($500 million, as adjusted), he was required to make an HSR Act filing because the five-year exemption period of his 2013 filing had ended. As a result of this acquisition, Fairbank held voting securities of COF valued in excess of the $100 million threshold, as adjusted, which in 2018 was $168.8 million.

18. Although required to do so, Fairbank did not file under the HSR Act or observe the HSR Act's waiting period prior to completing the March 8, 2018, transaction.

19. On December 18, 2019, Fairbank made a corrective filing and the waiting period expired on January 17, 2020. Fairbank was in continuous violation of the HSR Act from March 8, 2018, when he acquired the COF voting securities valued in excess of the HSR Act's then applicable $100 million filing threshold, as adjusted ($168.8 million), through January 17, 2020, when the waiting period expired on his corrective filing.

VIII. Requested Relief

Wherefore, the United States requests:

a. That the Court adjudge and decree that Defendant's acquisition of COF voting securities on March 8, 2018, was a violation of the HSR Act, 15 U.S.C. 18a; and that Defendant was in violation of the HSR Act each day from March 8, 2018, through January 17, 2020;

b. that the Court order Defendant to pay to the United States an appropriate civil penalty as provided by the Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), the Debt Collection Improvement Act of 1996, Public Law 104 134 § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461), and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 84 FR 3980 (February 14, 2019);

c. that the Court order such other and further relief as the Court may deem just and proper; and

d. that the Court award the United States its costs of this suit.

Dated:

FOR THE PLAINTIFF UNITED STATES OF AMERICA:

Richard A. Powers,

Acting Assistant Attorney General, Department of Justice, Antitrust Division, Washington, DC 20530.

Maribeth Petrizzi,

DC Bar No. 435204, Special Attorney.

Kenneth A. Libby,

Special Attorney.

Kelly Horne,

Special Attorney.

Jennifer Lee,

Special Attorney.
Federal Trade Commission, Washington, DC 20580, (202) 326–2694.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Richard D. Fairbank,* Defendant.

Civil Action No. 1:21–cv–02325

[Proposed] Final Judgment

Whereas, the United States of America filed its Complaint on September 2, 2021, alleging that Defendant Richard D. Fairbank violated Section 7A of the Clayton Act (15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the ''HSR Act'')), and the United States and Defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against, or any admission by, any party regarding any such issue of fact or law;

And whereas Defendant agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law, and upon the consent of the parties, it is hereby *ordered, adjudged, and decreed*:

I. Jurisdiction

The Court has jurisdiction of the subject matter of this action and Defendant consents solely for the purpose of this action and the entry of this Final Judgment that this Court has jurisdiction over each of the parties to this action and that the Complaint states a claim upon which relief can be granted against Defendant under Section 7A of the Clayton Act, 15 U.S.C. 18a.

II. Civil Penalty

Judgment is hereby entered in this matter in favor of Plaintiff and against Defendant, and, pursuant to Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), the Debt Collection Improvement Act of 1996, Public Law 104–134 § 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461), the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74 § 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 84 FR 3980 (February 14, 2019), Defendant is hereby ordered to pay a civil penalty in the amount of six hundred thirty-seven thousand nine hundred and fifty dollars ($637,950). Payment of the civil penalty ordered hereby must be made by wire transfer of funds or cashier's check. If the payment is made by wire transfer, prior to making the transfer Defendant will contact the Budget and Fiscal Section of the Antitrust Division's Executive Office at *ATR.EXO-Fiscal-Inquiries@usdoj.gov* for instructions. If the payment is made by cashier's check, the check must be made payable to the United States Department of Justice and delivered to: Chief, Budget & Fiscal Section, Executive Office, Antitrust Division, United States Department of Justice, Liberty Square Building, 450 5th Street NW, Room 3016, Washington, DC 20530.

Defendant must pay the full amount of the civil penalty within thirty (30) days of entry of this Final Judgment. In the event of a default or delay in payment, interest at the rate of eighteen (18) percent per annum will accrue thereon from the date of the default or delay to the date of payment.

III. Costs

Each party will bear its own costs of this action, except as otherwise provided in Paragraph IV.C.

IV. Enforcement of Final Judgment

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendant agrees that in a civil contempt action, a motion to show cause, or a similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of this Final Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence, and Defendant waives any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws, including Section 7A of the Clayton Act and Regulations promulgated thereunder. Defendant agrees that he may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In an enforcement proceeding in which the Court finds that Defendant has violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with other relief that may be appropriate. In connection with a successful effort by the United States to enforce this Final Judgment against Defendant, whether litigated or resolved before litigation, Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as all other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

V. Expiration of Final Judgment

This Final Judgment will expire upon payment in full by the Defendant of the civil penalty required by Section II of this Final Judgment.

VI. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated:

[Court approval subject to the procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16]

United States District Judge.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Richard D. Fairbank,* Defendant.

Civil Action No. 1:21–cv–02325

Competitive Impact Statement

The United States of America (''United States''), under Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h) (''APPA'' or ''Tunney Act''), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On September 2, 2021, the United States filed a Complaint against Defendant Richard D. Fairbank (''Fairbank''), related to Fairbank's acquisitions of voting securities of Capital One Financial Corporation (''COF'') in March 2018. The Complaint alleges that Fairbank violated Section 7A of the Clayton Act, 15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the ''HSR Act''). The HSR Act requires certain acquiring persons and certain persons whose voting securities or assets are acquired to file notifications with the United States Department of Justice and the Federal Trade Commission (collectively, the ''federal antitrust agencies'') and to observe a waiting period before consummating certain acquisitions of voting securities or assets. 15 U.S.C. 18a (a) and (b). These notification and waiting period requirements apply to acquisitions that meet the HSR Act's size of transaction and size of person thresholds, which have been adjusted annually since 2004. The size of transaction threshold is met for transactions valued over $50 million, as adjusted ($84.4 million for most of 2018). In addition, there is a separate filing requirement for transactions in which the acquirer will hold voting securities in excess of $100 million, as adjusted ($168.8 million in 2018), and for transactions in which the acquirer will hold voting securities in excess of $500 million, as adjusted ($843.9 million in 2018).

With respect to the size of person thresholds, the HSR Act requires one person involved in the transaction to have sales or assets in excess of $10 million, as adjusted ($16.9 million in 2018), and the other person to have sales or assets in excess of $100 million, as adjusted ($168.8 million in 2018). A key purpose of the notification and waiting period requirements is to protect consumers and competition from potentially anticompetitive transactions by providing the federal antitrust agencies an opportunity to conduct an antitrust review of proposed transactions before they are consummated.

Section 802.21 of the HSR Rules, 16 CFR 802.21, provides that, once a person has filed under the HSR Act and the waiting period has expired, the person can acquire additional voting securities of the same issuer without filing a new notification for five years from the expiration of the waiting period, so long as the value of the person's holdings do not exceed a threshold higher than was indicated in the filing (''802.21 exemption'').

The Complaint alleges that Fairbank acquired voting securities of COF without filing the required pre-acquisition HSR Act notifications with the federal antitrust agencies and without observing the waiting period. Fairbank's acquisition of COF voting securities exceeded the $100-million statutory threshold, as adjusted, ($168.8 million at the time of the acquisition) and Fairbank and COF met the then-applicable statutory size of person thresholds (which were $16.9 and $168.8 million, respectively). Moreover, although Fairbank was not a new investor in COF voting securities at the time of the acquisition, his transaction did not satisfy the requirements of the 802.21 exemption.

At the same time the Complaint was filed in the present action, the United States also filed a Stipulation and proposed Final Judgment that resolves the allegations stated in the complaint. The proposed Final Judgment is designed to address the violation alleged in the Complaint and penalize Fairbank's HSR Act violations. Under the proposed Final Judgment, Fairbank must pay a civil penalty to the United States in the amount of $637,950.

The United States and the Defendant have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States first withdraws its consent. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

The crux of Fairbank's violation is that he failed to submit an HSR notification even though his acquisition of COF voting securities as part of his compensation package satisfied the HSR filing requirements and he was not eligible to take advantage of the 802.21 exemption. At all times relevant to the Complaint, Fairbank had sales or assets in excess of $16.9 million. At all times relevant to the Complaint, COF had sales or assets in excess of $168.8 million.

Fairbank is Chief Executive Officer of COF and in that capacity, he frequently receives performance stock units (''PSUs'') as a part of his compensation package. On February 5, 2013, due to the imminent vesting of PSUs, Fairbank made an HSR filing for an acquisition of COF voting securities that would result in holdings exceeding the adjusted $100 million threshold then in effect of $168.8 million. The waiting period for the filing expired on March 7, 2013, and Fairbank commenced the acquisition four days later. For a period of five years, until March 6, 2018, Fairbank was permitted under the 802.21 exemption to acquire additional voting securities of COF without making another HSR Act filing so long as he did not exceed the $500 million threshold, as adjusted.

On March 8, 2018, more than five years after expiration of the waiting period for the February 5, 2013 filing, Fairbank acquired 101,148 voting securities of COF due to vesting PSUs. Even though this acquisition did not bring Fairbank's holdings over the next highest threshold ($500 million, as adjusted), he was required to make an HSR Act filing because the five-year exemption period of his 2013 filing had ended. As a result of the March 2018

acquisition, Fairbank held voting securities of COF valued in excess of the $100 million threshold, as adjusted, which in 2018 was $168.8 million. Although required to do so, Fairbank did not file under the HSR Act or observe the HSR Act's waiting period prior to completing the March 8, 2018 transaction.

Fairbank made a corrective HSR Act filing on December 18, 2019, promptly after learning that this acquisition was subject to the HSR Act's requirements and that he was obligated to file. The waiting period for that corrective filing expired on January 17, 2020.

The Complaint further alleges that Fairbank's March 2018 HSR Act violation was not the first time Fairbank had failed to observe the HSR Act's notification and waiting period requirements. In 1999 and 2004, Fairbank acquired voting securities of COF that resulted in his holdings exceeding the then-applicable HSR notification thresholds. Although he was required to do so, Fairbank did not file under the HSR Act prior to acquiring COF voting securities in 1999 and 2004. On February 12, 2008, Fairbank made a corrective filing under the HSR Act for the acquisitions of COF voting securities he had made in 1999 and 2004. In a letter accompanying the corrective filing, Fairbank acknowledged that the transactions were reportable under the HSR Act, but asserted that the failure to file and observe the waiting period was inadvertent. Fairbank outlined in his letter a system he would implement to ensure that all future reportable acquisitions would be identified and the required HSR notifications filed. The Federal Trade Commission did not seek civil penalties against Fairbank for the 1999 and 2004 COF acquisitions.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment imposes a $637,950 civil penalty designed to address the violation alleged in the Complaint, penalize the Defendant, and deter others from violating the HSR Act. The United States adjusted the penalty downward from the maximum permitted under the HSR Act because the violation was inadvertent, the Defendant promptly self-reported the violation after discovery, and the Defendant is willing to resolve the matter by consent decree and thereby avoid prolonged investigation and litigation. The penalty will not have any adverse effect on competition; instead, the relief will have a beneficial effect on competition because the federal antitrust agencies will be properly notified of future acquisitions, in accordance with the law.

IV. Remedies Available to Potential Private Litigants

There is no private antitrust action for HSR Act violations; therefore, entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust action.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the Defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the **Federal Register**. Written comments should be submitted to: Maribeth Petrizzi, Special Attorney, United States, c/o Federal Trade Commission, 600 Pennsylvania Avenue NW, CC–8416, Washington, DC 20580, Email: *bccompliance@ftc.gov*.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the Defendant. The United States is satisfied, however, that the proposed relief is an appropriate remedy in this matter. Given the facts of this case, including the Defendant's self-reporting of the violation and willingness to promptly settle this matter, the United States is satisfied that the proposed civil penalty is sufficient to address the violation alleged in the Complaint and to deter violations by similarly situated entities in the future, without the time, expense, and uncertainty of a full trial on the merits.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States* v. *U.S. Airways Grp., Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the

complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not ''make de novo determination of facts and issues.'' *United States* v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead, ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.'' *W. Elec. Co.,* 993 F.2d at 1577 (quotation marks omitted). ''The court should bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *Microsoft,* 56 F.3d at 1460 (quotation marks omitted); *see also United States* v. *Deutsche Telekom AG,* No. 19–2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional intent. *Id.* at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft,* 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States* v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'') (internal citations omitted); *United States* v. *Republic Servs., Inc.,* 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case.''). The ultimate question is whether ''the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.''' *Microsoft,* 56 F.3d at 1461 (*quoting W. Elec. Co.,* 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged.''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using consent judgments proposed by the United States in antitrust enforcement, Public Law 108–237 § 221, and added the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways,* 38 F. Supp. 3d at 76 (citing *Enova Corp.,* 107 F. Supp. 2d at 17).

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Date: September 2, 2021.

Respectfully submitted,

Kenneth A. Libby,
Special Attorney, U.S. Department of Justice, Antitrust Division, c/o Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, Phone: (202) 326–2694, Email: klibby@ftc.gov.

[FR Doc. 2021–20149 Filed 9–16–21; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On September 13, 2021, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Texas in the lawsuit entitled *United States of America* v. *Formosa Plastics Corporation, Texas,* Civil Action No. 21–00043.

In this action, the United States, on behalf of the U.S. Environmental Protection Agency, filed a Complaint and proposed Consent Decree pertaining to Clean Air Act (''CAA'') violations at the petrochemical manufacturing plant (''Facility'') owned and operated by Formosa Plastics Corporation, Texas (''Defendant'') in Point Comfort, Texas. This case stems in part from a May 2, 2013 accidental release of an extremely hazardous substance that caused a fire and explosion at the Facility that resulted in multiple injuries to workers. In the Complaint, the United States alleged that the Defendant violated Section 112(r)(1) of the CAA, 42 U.S.C.

7412(r)(1), by failing to identify risks associated with accidental releases of extremely hazardous substances and failing to design and maintain a safe facility. The Complaint also alleges numerous violations of Section 112(r)(7) of the CAA, 42 U.S.C. 7412(r)(7), and the Chemical Accident Prevention regulations promulgated at 40 CFR part 68, including failure to implement safe work practices and failure to conduct mechanical integrity inspections and tests. Under the proposed settlement, the Defendant will pay $2,850,000 in civil penalties and will be required to update its response and personal protection plans to prevent employee injury, conduct a third-party audit of its risk management practices, perform corrective action based on the audit results, and develop key performance indicators to evaluate future compliance.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America* v. *Formosa Plastics Corporation, Texas,* D.J. Ref. No. 90–5–2–1–08995/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $11.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Thomas Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2021–20121 Filed 9–16–21; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–21–0013; NARA–2021–045]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: NARA must receive comments by November 1, 2021.

ADDRESSES: You may submit comments by the following method. You must cite the control number, which appears on the records schedule in parentheses after the name of the agency that submitted the schedule.

- *Federal eRulemaking Portal: http://www.regulations.gov.*

Due to COVID–19 building closures, we are currently temporarily not accepting comments by mail. However, if you are unable to comment via *regulations.gov*, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov.* For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov,* by mail at the address above, or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we have made to the proposed records schedule. We will then send the schedule for final approval by the Archivist of the United States. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,*

after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of Agriculture, Forest Service, Wildland Fire Incident Management (DAA–0095–2021–0005).
2. Department of Defense, Defense Counterintelligence and Security Agency, Defense Information System for Security (DAA–0446–2021–0009).
3. Department of Energy, Federal Energy Regulatory Commission, Hydropower Projects (DAA–0138–2019–0005).
4. Department of Energy, Western Area Power Administration, Environmental Program (DAA–0201–2020–0011).
5. Department of State, Office of U.S. Foreign Assistance Resources, Consolidated Schedule (DAA–0059–2019–0017).
6. Department of Transportation, Federal Transit Administration, Drug and Alcohol Management Information System (DAA–0408–2020–0001).
7. Department of Transportation, Office of the Secretary, Records related to Disadvantaged Business Enterprise (DAA–0398–2019–0008).
8. Department of the Treasury, Internal Revenue Service, Estate and Gift Tax Returns (DAA–0058–2021–0005).
9. Administrative Office of the United States Courts, Agency-wide, Records of Surety Agents (DAA–0021–2020–0002).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2021–20091 Filed 9–16–21; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0227]

Operator Licensing Examination Standards for Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: NUREG; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing NUREG–1021, Revision 12, ''Operator Licensing Examination Standards for Power Reactors.''

DATES: NUREG–1021, Revision 12 is available on September 17, 2021 and will be applicable to operator licensing examinations that are administered 6 months after this date. Power reactor facility licensees that elect to prepare, proctor, and grade written examinations and/or prepare operating tests with administration dates 6 months or more after the date of this notice, must do so based on the guidance in NUREG–1021, Revision 12.

ADDRESSES: Please refer to Docket ID NRC–2020–0227 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0227. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* NUREG–1021, Revision 12 is available in ADAMS under Accession No. ML21256A276.
- *Attention:* The PDR, where you may examine and purchase copies of public documents, is currently closed. You may submit your request to the PDR by email to *pdr.resource@nrc.gov* or call 1–800–397–4209 or 302–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Maurin Scheetz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2758, email: *Maurin.Scheetz@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

NUREG–1021, Revision 12, ''Operator Licensing Examination Standards for Power Reactors,'' provides policies, procedures, and guidance for the development, administration, and grading of examinations used for licensing operators at nuclear power reactor facilities under the Commission's regulations in part 55 of title 10 of the *Code of Federal Regulations* (CFR), ''Operators' Licenses.'' This NUREG also provides guidance for maintaining operators' licenses and for the NRC to conduct requalification examinations when necessary. The NRC is issuing Revision 12 of this NUREG to (1) streamline information into topic-based sections for ease of use, (2) clarify instructions for the identification and grading of performance deficiencies on the operating test, (3) revise instructions for the selection of critical tasks and the assessment of critical and significant performance deficiencies, and (4) implement changes to support the testing of fundamentals topics on the site-specific initial licensing examination instead of in a separate generic fundamentals examination.

II. Additional Information

Revision 12 of NUREG–1021 replaces Revision 11 of NUREG–1021. Draft NUREG–1021, Revision 12, was published in the **Federal Register** for public comment on December 1, 2020 (85 FR 77280) with a 75-day comment period. The NRC received 124 public

comments from private citizens and industry organizations. The NRC staff's evaluation and resolution of the public comments are documented in ADAMS under Accession No. ML21211A578.

III. Congressional Review Act

NUREG–1021, Revision 12, is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated: September 14, 2021.

For the Nuclear Regulatory Commission.

Christian B. Cowdrey,

Chief, Operator Licensing and Human Factors Branch, Division of Reactor Oversight, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–20171 Filed 9–16–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of September 20, 27, October 4, 11, 18, 25, 2021.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of September 20, 2021

There are no meetings scheduled for the week of September 20, 2021.

Week of September 27, 2021—Tentative

Thursday, September 30, 2021

9:00 a.m. Strategic Programmatic Overview of the Operating Reactors and New Reactors Business Lines (Public Meeting); (Contact: Candace De Messieres: 301–415–8395)

Additional Information: Due to COVID–19, there will be no physical public attendance. The public is invited to attend the Commission's meeting live by webcast at the Web address—*https://video.nrc.gov/*.

Week of October 4, 2021—Tentative

Tuesday, October 5, 2021

10:00 a.m. Meeting with the Advisory Committee on the Medical Uses of Isotopes (Public Meeting); (Contact: Don Lowman: 301–415–5452)

Additional Information: Due to COVID–19, there will be no physical public attendance. The public is invited to attend the Commission's meeting live by webcast at the Web address—*https://video.nrc.gov/*.

Friday, October 8, 2021

10:00 a.m. Meeting with the Advisory Committee on Reactor Safeguards (Public Meeting); (Contact: Larry Burkhart: 301–287–3775)

Additional Information: Due to COVID–19, there will be no physical public attendance. The public is invited to attend the Commission's meeting live by webcast at the Web address—*https://video.nrc.gov/*.

Week of October 11, 2021—Tentative

There are no meetings scheduled for the week of October 11, 2021.

Week of October 18, 2021—Tentative

There are no meetings scheduled for the week of October 18, 2021.

Week of October 25, 2021—Tentative

Thursday, October 28, 2021

10:00 a.m. Meeting with the Organization of Agreement States and the Conference of Radiation Control Program Directors (Public Meeting); (Contact: Celimar Valentin-Rodriguez: 301–415–7124)

Additional Information: Due to COVID–19, there will be no physical public attendance. The public is invited to attend the Commission's meeting live by webcast at the Web address—*https://video.nrc.gov/*.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Tyesha.Bush@nrc.gov* or *Betty.Thweatt@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: September 15, 2021.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2021–20296 Filed 9–15–21; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–1050; NRC–2016–0231]

Interim Storage Partners, LLC; WCS Consolidated Interim Storage Facility; Issuance of Materials License and Record of Decision

AGENCY: Nuclear Regulatory Commission.

ACTION: License and record of decision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued Materials License No. SNM–2515 to Interim Storage Partners, LLC (ISP) to construct and operate the WCS Consolidated Interim Storage Facility (CISF) as proposed in its license application, as amended, and to receive, possess, store, and transfer spent nuclear fuel and Greater-than-Class-C radioactive waste at the WCS CISF in Andrews County, Texas. ISP will be required to operate under the conditions listed in Materials License No. SNM–2515. The NRC staff has published a record of decision (ROD) that supports the NRC's decision to approve ISP's license application for the WCS CISF and to issue the license.

DATES: September 17, 2021.

ADDRESSES: Please refer to Docket ID NRC–2016–0231 when contacting the NRC about the availability of information regarding this document. You may access publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2016–0231. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly

available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the section of this document entitled, **SUPPLEMENTARY INFORMATION.**

• *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John-Chau Nguyen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0262; email: *John-Chau.Nguyen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC has issued a license to ISP for its WCS CISF in Andrews County, Texas (ADAMS Package Accession No. ML21188A096). Materials License No. SNM–2515 authorizes ISP to construct and operate its facility as proposed in its license application, as amended, and to receive, possess, store, and transfer spent nuclear fuel, including a small quantity of mixed-oxide fuel, and Greater-than-Class-C radioactive waste at the WCS CISF. The license authorizes ISP to store up to 5,000 metric tons of uranium [5,500 short tons] of spent nuclear fuel for a license period of 40 years. ISP will be required to operate under the conditions listed in Materials License No. SNM–2515.

The NRC staff's ROD that supports the NRC's decision to approve ISP's license application for the WCS CISF and to issue Materials License No. SNM–2515 is available in ADAMS under Accession No. ML21222A214. The ROD satisfies the regulatory requirement in section 51.102 paragraph (a) of title 10 of the *Code of Federal Regulations* (10 CFR), which requires that a Commission decision on any action for which a final environmental impact statement (EIS) has been prepared be accompanied by or include a concise public ROD. As discussed in the ROD and the final EIS for ISP's license application for a CISF for spent nuclear fuel in Andrews County, Texas (ADAMS Accession No. ML21209A955), the NRC staff considered a range of reasonable alternatives that included the No-Action alternative, as required by the National Environmental Policy Act of 1969, as amended; storage at a government-owned CISF; alternative design and storage technologies; and alternative locations. The final EIS documents the environmental review, including the NRC staff's recommendation to issue an NRC license to ISP to construct and operate a CISF for spent nuclear fuel at the proposed location, subject to the determinations in the NRC staff's safety review of the application. The final EIS conclusion is based on the NRC staff's independent environmental review, as well as (i) the license application, which includes the environmental report and supplemental documents and ISP's responses to the NRC staff's requests for additional information; (ii) consultation with Federal, State, Tribal, and local agencies and input from other stakeholders, including members of the public; and (iii) the assessments provided in the final EIS.

The NRC staff prepared a final safety evaluation report that documents the staff's safety and security review of the application (ADAMS Accession No. ML21188A101). The staff's safety and security review found that the application met applicable NRC regulations in 10 CFR part 72, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater than Class C Waste.''

Documents related to the application carry Docket ID NRC–2016–0231. These documents for the ISP license include the license application, the applicant's safety analysis report, emergency plan, physical security plan, environmental report, updates to these documents, and applicant supplements and responses to NRC staff requests for additional information, and the NRC staff's final safety evaluation report, final EIS, and ROD.

ISP's request for a materials license was previously noticed in the **Federal Register** on November 14, 2016 (81 FR 79531). A notice of docketing with an opportunity to request a hearing and to petition for leave to intervene was published in the **Federal Register** on January 30, 2017 (82 FR 8773). Four groups of petitioners filed petitions to intervene. An Atomic Safety and Licensing Board considered petitions and admitted one contention. The Board subsequently dismissed the contention as moot after ISP supplemented its application with information that the contention had noted was missing, and the Board subsequently terminated the adjudicatory proceeding. Intervenors appealed the decisions to the Commission, and the Commission affirmed the Board decisions, with one new contention remanded to the Board for consideration. The Board subsequently dismissed the remanded contention, and the Commission denied an appeal of the Board decision.

In issuing a materials license to ISP for the WCS CISF, the NRC has determined based on its review of this application that there is reasonable assurance that: (i) The activities authorized by the license can be conducted without endangering the health and safety of the public; and (ii) these activities will be conducted in compliance with the applicable regulations of 10 CFR part 72. The NRC has further determined that the issuance of the license will not be inimical to the common defense and security.

In accordance with 10 CFR 2.390 of the NRC's ''Rules of Practice,'' the details with respect to this action, including the final safety evaluation report and accompanying documentation and license, are available electronically in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* From this site, you can access ADAMS, which provides text and image files of the NRC public documents.

II. Availability of Documents

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

Document	ADAMS accession No.
1. Initial application, safety analysis report (SAR) and environmental report (ER), dated April 28, 2016	ML16133A070 (Package).
2. Application Revision 1, SAR Revision 1, and ER Revision 1, dated March 16, 2017	ML17082A021 (Package).
3. Application Revision 2, SAR Revision 2, and ER Revision 2, dated July 19, 2018	ML18206A595 (Package).
4. ER Revision 3, dated February 17, 2020	ML20052E144 (Package).

Document	ADAMS accession No.
5. SAR Revision 3, dated May 22, 2020	ML20150A337 (Package).
6. Application Revision 3, dated August 24, 2020	ML20237F470.
7. SAR Revision 4, September 2, 2020	ML20261H419 (Package).
8. Application Revision 4 and SAR Revision 5, dated April 12, 2021	ML21105A766 (Package).
9. Applicant response to request for additional information, dated July 19, 2018	ML18208A437.
10. Applicant response to request for additional information, dated January 7, 2019	ML19009A099.
11. Applicant response to request for additional information, dated March 22, 2019	ML19085A055.
12. Applicant response to request for additional information, dated May 31, 2019	ML19156A048 (Package).
13. Applicant response to request for additional information, dated June 26, 2019	ML19197A044.
14. Applicant response to request for additional information, dated June 28, 2019	ML19184A159 (Package).
15. Applicant response to request for additional information, dated June 28, 2019	ML19190A227 (Package).
16. Applicant response to request for additional information, dated July 31, 2019	ML19217A231 (Package).
17. Applicant response to request for additional information, dated August 20, 2019	ML19235A157 (Package).
18. Applicant response to request for additional information, dated September 18, 2019	ML19270E399.
19. Applicant submittal of supplemental information, dated September 20, 2019	ML19268A113 (Package).
20. Applicant response to request for additional information, dated November 21, 2019	ML19337B502 (Package).
21. Applicant response to request for additional information, dated January 6, 2020	ML20015A448 (Package).
22. Applicant response to request for additional information, dated January 17, 2020	ML20028E843 (Package).
23. Applicant response to request for additional information, dated January 22, 2020	ML20028D890 (Package).
24. Applicant response to request for additional information, dated February 14, 2020	ML20052D995 (Package).
25. Applicant response to request for additional information, dated February 14, 2020	ML20052E047 (Package).
26. Applicant submittal of supplemental information, dated March 5, 2020	ML20071F152 (Package).
27. Applicant response to request for additional information, dated March 16, 2020	ML20083J964 (Package).
28. Applicant response to request for additional information, dated April 7, 2020	ML20105A133 (Package).
29. Applicant response to request for additional information, dated April 7, 2020	ML20105A171 (Package).
30. Applicant response to request for additional information, dated May 18, 2020	ML20139A173 (Package).
31. Applicant response to request for additional information, dated June 11, 2020	ML20163A008.
32. Applicant submittal of supplemental information, dated July 21, 2020	ML20203M040.
33. Applicant submittal of supplemental information, dated January 27, 2021	ML21027A147.
34. Draft Environmental Impact Statement, dated May 2020	ML20122A220.
35. Overview of the Draft Environmental Impact Statement, dated May 2020	ML20121A016.
36. Overview of the Draft Environmental Impact Statement (Spanish language version), dated May 2020	ML20136A148.
37. Final Environmental Impact Statement, dated July 2021	ML21209A955.
38. Overview of the Final Environmental Impact Statement, dated July 2021	ML21200A050.
39. Final Safety Evaluation Report, dated September 2021	ML21188A101.
40. NRC Staff's Record of Decision, dated September 13, 2021	ML21222A214.
41. Materials License for ISP, dated September 13, 2021	ML21188A096 (Package).

Dated: September 13, 2021.

For the Nuclear Regulatory Commission.

Shana R. Helton,

Director, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2021–20092 Filed 9–16–21; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2020–171; CP2020–172; CP2020–179; CP2020–182; CP2020–196]

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 21, 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

[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).

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):* CP2020–171; *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 13, 2021; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Gregory Stanton; *Comments Due:* September 21, 2021.

2. *Docket No(s):* CP2020–172; *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 13, 2021; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Gregory Stanton; *Comments Due:* September 21, 2021.

3. *Docket No(s):* CP2020–179; *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 13, 2021; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* September 21, 2021.

4. *Docket No(s):* CP2020–182; *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 13, 2021; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* September 21, 2021.

5. *Docket No(s):* CP2020–196; *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 13, 2021; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* September 21, 2021.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2021–20172 Filed 9–16–21; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92963; File No. SR–CboeEDGX–2021–030]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 13.8 To Introduce a Product To Be Known as ''Cboe Premium Exchange Tools'' and To Amend Its Fee Schedule To Establish a Fee for a User Login That Elects To Subscribe to the Cboe Premium Exchange Tools

September 13, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 30, 2021, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to amend Rule 13.8 to introduce a new product to be known as ''Cboe Premium Exchange Tools'' and to amend its Fee Schedule to establish a fee for a user login that elects to subscribe to the Cboe Premium Exchange Tools. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt Rule 13.8(g) to introduce a new product to be known as Cboe Premium Exchange Tools, as further described below, and to amend its Fee Schedule to adopt a monthly fee assessed to users that elect to subscribe to such Cboe Premium Exchange Tools, effective August 31, 2021.

Cboe Premium Exchange Tools

Currently, Members,[5] Sponsored Participants,[6] and service bureaus are leveraging certain value-added tools (*i.e.,* Cboe Premium Exchange Tools) on the Exchange to obtain certain information free of charge. Particularly, Cboe Premium Exchange Tools offers an easily accessible internet-based tool that allows users access to certain execution information for their firm through a single interface. Now, the Exchange proposes to adopt Rule 13.8(g) to describe the Cboe Premium Exchange Tools in its Rules. Specifically, proposed Rule 13.8(g) provides that the Cboe Premium Exchange Tools is a web-based tool designed to give a subscribing user the ability to track latency statics of the user's logical order entry ports or execution information of the Member or a Sponsored Participant of the Member. The proposed rule also provides that a user may obtain historical reports of such execution information, as further described below.[7] Cboe Premium Exchange Tools is currently comprised of the following three reports: (i) Trade data report,[8] (ii)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Exchange Rule 1.5(n).

[6] *See* Exchange Rule 1.5(z).

[7] All information available to Members as described herein is historical information.

[8] Trade Data Reports may be obtained by a Member, or if authorized to do so a Sponsored Participant.

latency statistics report,[9] and (iii) volume history report.[10]

Trade Data Report

The trade data report offers the ability for a user to view and/or export its Member's and, if applicable, a Sponsored Participant of the Member, granular execution detail.[11] Specifically, the report currently includes the following information: Date, time, Member identifier, clearing member identifier, session, order identification, symbol, side (*i.e.,* buy, sell, sell short), price, quantity, capacity (*e.g.,* agent, principal), liquidity indicator (*i.e.,* adder or remover of liquidity), order type,[12] indicator as to whether order set or joined the national best bid or offer (''NBBO''),[13] and associated fee code(s). The information is provided in order to aid Members in conducting their own reconciliations and assist in report generation, and, unlike the Volume History Report, is available on an execution-by-execution basis.

Latency Statistics Report

The latency statistics report offers functionality to view latency statistics relating to logical order entry ports, including a Member's orders, acknowledgements, and cancels, including roundtrip data from into the edge network device and back, which accounts for latency within the Exchange order gateways and matching engines. Specifically, the latency statistics report includes the following information: (i) The roundtrip time between the order entering the Exchange's network and the time the order acknowledgement leaves the Exchange's network, (ii) the roundtrip time between an order cancellation request and the time the order cancellation request acknowledgement leaves the Exchange's network, (iii) the roundtrip time between an order entering the Exchange's network and the time that the order appears on the Multicast PITCH feed, (iv) the roundtrip time for a Transmission Control Protocol (''TCP'') [14] message sent by the Exchange to be acknowledged by the Member, and (v) averages a Member can expect for items (i) through (iii) across their own ports and across the entire system (*i.e.,* across all Members). A Member, service bureau, or Sponsored Participant may view the latency statistics for orders that they send to the Exchange through their own respective logical order entry ports. The information included in the latency statistics report is designed to give users insight into the performance characteristics of their logical order entry ports.

Volume History Report

The volume history report provides users the functionality to view the Member's, high level volume history on the Exchange, as well as more granular added, removed, and routed orders at a per Tape and MPID level or a per security level for the purpose of tracking and measuring outcomes.[15] The tools offer functionality to allow a user to view aggregated volume history reports on behalf of the Member or a Sponsored Participant of the Member for the purpose of firm or client-level reporting, administration, and risk management.

Cboe Premium Exchange Tools Fee

The Exchange also proposes to adopt a fee applicable to users that subscribe to the proposed Cboe Premium Exchange Tools. Specifically, as proposed, the Exchange would assess a monthly fee of $40 for each user login that subscribes to any of the reports and services that comprise the Cboe Premium Exchange Tools. As discussed above, Premium Exchange Tools provides users with an easily accessible tool that allows them to access certain execution and latency information from a single interface and provides such information in a convenient, user-friendly format. Further, a number of enhancements have recently been made to the various reports and services included in the Cboe Premium Exchange Tools. For example, the trade data report has recently been enhanced to provide timestamps with microsecond granularity for added detail on a per trade basis. Therefore, the Exchange believes the assessment of such a fee aligns with the additional value and benefits provided to users that choose to subscribe to the Cboe Premium Exchange Tools. The Exchange also believes that the proposal is appropriate to balance the Exchange resource requirements in creating, managing, and supporting the services and reports provided by the Cboe Premium Exchange Tools.

The Cboe Premium Exchange Tools fee will be assessed to a user for the entire month regardless of when the user receives access to the Premium Exchange Tools. If a user obtains or cancels a subscription to the Cboe Premium Exchange Tools on or after the first business day of the month, the user will be required to pay the entire Cboe Premium Exchange Tools fee for that month.

The Exchange anticipates a number of users will subscribe to the Cboe Premium Exchange Tools. It is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make the reports or services available and that potential subscribers may purchase it only if they voluntarily choose to do so. Further, the Exchange notes that other exchanges offer similar products.[16]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[17] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[18] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities. The Exchange also believes the proposed rule change is consistent with the Section 6(b)(5) [19] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect

[9] Latency Statistics Reports may be obtained by a Member, Sponsored Participant or service bureaus as it relates to their respective logical order entry ports.

[10] Volume History Reports may be obtained by a Member.

[11] Sponsored Participants may also subscribe to the Trade Data Report, provided that its Sponsoring Member provides the Exchange authorization to do so. Trade Data Reports provided to Sponsored Participants only include execution detail related to the Sponsored Participant.

[12] *See* Exchange Rule 11.8.

[13] Hidden orders that neither set or join the NBBO are identified as such within the report.

[14] TCP is a communications standard that enables application programs and computing devises to exchange messages over a network.

[15] Information included in the Volume History Report includes all activity, including that executed on behalf of Sponsored Participants. Execution volume made on behalf of a Sponsored Participant is not delineated within the Volume History Report.

[16] *See* the ''TradeInfo Fees'' offered on the Nasdaq Stock Exchange (''Nasdaq''), Nasdaq BX, Inc. (''Nasdaq BX''), and the Nasdaq PHLX LLC (''Phlx''), each of which assess a fee of $95 per user per month.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4).

[19] 15 U.S.C. 78f(b)(5).

investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [20] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposal to adopt 13.8(g) to provide for the Cboe Premium Exchange Tools is reasonable for several reasons. First, certain of the underlying information available via the Cboe Premium Exchange Tools is otherwise generally available to users. While the proposal provides a value-added service by setting forth such information in a user-friendly format, the underlying data included in the trade data report and volume history report contains general Member-specific execution information to which a Member would have access to without subscribing to Premium Exchange Tools, (*e.g.,* via their own order entry ports which include Member-provided order instructions, exchange-sent acknowledgement messages, and drop copies). Moreover, the data included in the trade data report and volume history report is substantially similar to data offered in the Nasdaq TradeInfo tool, which provides detailed data on the status of orders executions, cancels and breaks, and generates reports for download, and allows the member to cancel or correct open orders.[21]

While certain underlying data included in the latency statistics report such as latency averages across the System is not otherwise available to Members, or where applicable, Sponsored Participants, or service bureaus, the Exchange notes such users can obtain similar information on their own latency statistics relating to their orders, acknowledgements, TCP messages, and cancels, including roundtrip data from out of their edge network device and back without subscribing to Premium Exchange Tools. Particularly, users are able to calculate these latencies on their own servers as the underlying transaction information is timestamped, which would similarly account for the latency throughout the Exchange side of the network (*i.e.,* the Exchange does not believe latency statistics calculated by users themselves would be materially different from the Exchange's calculations). The Exchange notes that although latency information related to averages across the system would not otherwise be available to Members, Sponsored Participants or service bureaus absent subscribing to Premium Exchange Tools, providing users such information is not novel as similar information was historically made available in an offering by Nasdaq. Specifically, prior to its decommission in December of 2020, Nasdaq provided summary latency statistics via its QView tool which provided members that subscribed to QView Latency Optics add-on service the ability to monitor three types of latency for order messages and compare that latency to the average on the Nasdaq System.[22] The specific latency statistics included: (i) The roundtrip time between order entry and receipt of acknowledgement; (ii) roundtrip time between order entry and the time that the order appears on the TotalView ITCH multicast feed; and (iii) the roundtrip time between the entry of an order cancellation request and the time that the message in reply is received by the client device.[23] Similarly as noted above, the Exchange's proposed latency statistics report provides users averages across the entire System for three types of latency: (i) The roundtrip time between the order entering the Exchange's network and the time the order acknowledgement leaves the Exchange's network, (ii) the roundtrip time between an order cancellation request and the time the order cancellation request acknowledgement leaves the Exchange's network, (iii) the roundtrip time between an order entering the Exchange's network and the time that the order appears on the Multicast PITCH feed. Even after QView was decommissioned, the underlying data needed to generate the latency statistics (other than for averages across the Nasdaq system) for each member was and continues to be available via the Nasdaq TradeInfo tool.[24]

The Exchange believes that the proposed fee for the Cboe Premium Exchange Tools is consistent with the Act in that it is reasonable, equitable, and not unfairly discriminatory. In particular, the Exchange believes that the proposed fee is reasonable because it is reasonably aligned with the value and benefits provided to users that choose to subscribe to the Cboe Premium Exchange Tools on the Exchange. As discussed above, Premium Exchange Tools provides users with an easily accessible tool that allows them to access certain execution and latency information from a single interface and provides such information in a convenient, user-friendly format. Also as described above, information provided by Premium Exchange Tools relates to the subscribing user's activity on the Exchange, and users may generally access and aggregate this information by other means, including its own internal systems, without a subscription to Premium Exchange Tools. As such, the Exchange believes that if a user determines that the fee is not cost-efficient for its needs, it may decline to subscribe to Premium Exchange Tools and access such information from other sources. Indeed, the Cboe Premium Tools is a completely voluntary product, and the Exchange is not required by any rule or regulation to offer the reports or services provided under the Cboe Premium Exchange Tools. Nonetheless, such tools may be beneficial to Members and non-Members as they provide various value-added Exchange reports and services. Providing the Cboe Premium Exchange Tools to users requires the Exchange to allocate additional resources to create, manage, and support the services and reports. Therefore, the Exchange believes that it is reasonable to assess a modest fee to users that subscribe to the Cboe Premium Exchange Tools.

The Exchange further believes the proposed fee is reasonable because the amount assessed is less than the analogous fees charged by Nasdaq, Nasdaq BX, and PHLX. The TradeInfo product offered by the aforementioned exchanges provides users the status of orders, executions, cancels and breaks, and provides the ability to cancel orders. Further, to view a variety of trading data, users can generate several different types of reports such as execution reports.[25] As described above, the Cboe Premium Exchange Tools will offer similar data to that provided by Nasdaq, Nasdaq BX, and PHLX while, the Exchange's proposed fee for the

[20] *Id.*

[21] *See* Securities and Exchange Act No. 90772 (December 22, 2020) 85 FR 86632 (December 30, 2020) (SR–NASDAQ–2020–088) (Proposed rule change describing the withdrawal of Nasdaq's QView product from sale and that the information included therein will continue to be available via TradeInfo).

[22] *See* Securities Exchange Act Release No. 68617 (January 10, 2013), 78 FR 3480 (January 16, 2013) (SR–Nasdaq–2013–005) (introducing the Latency Optics add-on). *See also* Securities Exchange Act Release No. 82003 (November 2, 2017), 82 FR 51894 (November 8, 2017) (SR–Nasdaq–2017–113) (proposed rule change that also describes the Latency Optics add-on service, which provided, among other things, subscribing members the ability to compare their latency to the average of the Nasdaq system).

[23] *Id.*

[24] Nasdaq similarly noted that users of TradeInfo are able to calculate latencies included in the Latency Optics add-on service as the underlying transaction information is timestamped. *See* Securities and Exchange Act No. 90772 (December 22, 2020) 85 FR 86632 (December 30, 2020) (SR–NASDAQ–2020–088).

[25] *See https://www.nasdaqtrader.com/Trader.aspx?id=tradeinfo.*

Cboe Premium Tools at $40 per month per user, is lower than each of the Nasdaq, Nasdaq BX, and PHLX fees for similar information which charge $95 per user.

The Exchange believes that the proposed fee is equitable and not unfairly discriminatory because it will apply to all Members and non-Members that choose to subscribe to the Cboe Premium Exchange Tools equally. As stated, the services and reports provided by the Cboe Premium Exchange Tools are completely optional and not necessary for trading. Rather, the Exchange voluntarily makes the Cboe Premium Exchange Tools available and users may choose to subscribe (and pay for) the Cboe Premium Exchange Tools based on their own individual business needs. Potential subscribers may subscribe to Cboe Premium Exchange Tools at any time if they believe it to be valuable or may decline to purchase such services and reports.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed Cboe Premium Exchange Tools will be available equally to all Members and non-Members that choose to subscribe to such tools. As stated, the Cboe Premium Exchange Tools are optional and Members and non-Members may choose to subscribe to such tools, or not, based on their view of the additional benefits and added value provided by utilizing the reports or services offered by the Cboe Premium Exchange Tools.

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, Nasdaq currently offers products that include similar information to that proposed under the Cboe Premium Exchange Tools. 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.'' 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'. . . .''. Accordingly, the Exchange does not believe its proposal 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

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[26] and Rule 19b–4(f)(6) thereunder.[27]

A proposed rule change filed under Rule 19b–4(f)(6)[28] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[29] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has proposed to implement this proposed rule change on August 31, 2021 and has asked the Commission to waive the 30-day operative delay for this filing. The Exchange states that the proposed data to be included in the proposed Cboe Premium Exchange Tools is already generally available to all users without a subscription to Cboe Premium Exchange Tools and/or is substantially similar to information that was historically, or currently is, included in similar products offered on Nasdaq.[30] The Commission believes waiver of the operative delay will allow a description of Cboe Premium Exchange Tools product to be immediately reflected in the Exchange's rules and is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative from August 31, 2021.[31]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–CboeEDGX–2021–030 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–CboeEDGX–2021–030. This file number should be included on the

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived that requirement in this case.

[28] 17 CFR 240.19b–4(f)(6).

[29] 17 CFR 240.19b–4(f)(6)(iii).

[30] *See supra* notes 21–24.

[31] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CboeEDGX–2021–030, and should be submitted on or before October 8, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–20082 Filed 9–16–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–251, OMB Control No. 3235–0256]

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:
Form F–3

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form F–3 (17 CFR 239.33) is used by foreign issuers to register securities pursuant to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. Form F–3 takes approximately 157.84 hours per response and is filed by approximately 113 respondents. We estimate that 25% of the 157.84 hours per response (39.46 hours) is prepared by the registrant for a total annual reporting burden of 4,459 hours (39.46 hours per response × 113 responses). Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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 control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: September 14, 2021.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–20120 Filed 9–16–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92958; File No. SR–NYSEArca–2021–77]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the Nuveen Growth Opportunities ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares)

September 13, 2021.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 31, 2021, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under NYSE Arca Rule 8.601–E: Nuveen Growth Opportunities ETF. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

[32] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

The Exchange has adopted NYSE Arca Rule 8.601–E for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges (''UTP''), of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company.[4] Commentary .01 to Rule 8.601–E requires the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Active Proxy Portfolio Shares on the Exchange. Therefore, the Exchange is submitting this proposal in order to list and trade shares (''Shares'') of Active Proxy Portfolio Shares of the Nuveen Growth Opportunities ETF (the ''Fund'') under Rule 8.601–E.

Key Features of Active Proxy Portfolio Shares

While funds issuing Active Proxy Portfolio Shares will be actively-managed and, to that extent, will be similar to Managed Fund Shares, Active Proxy Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which are actively-managed funds listed and traded under NYSE Arca Rule 8.600–E[5] and for which a ''Disclosed Portfolio'' is required to be disseminated at least once daily,[6] the portfolio for an issue of Active Proxy Portfolio Shares will be publicly disclosed within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end management investment companies registered under the Investment Company Act of 1940 (the ''1940 Act'').[7] The composition of the portfolio of an issue of Active Proxy Portfolio Shares would not be available at commencement of Exchange listing and trading. Second, in connection with the creation and redemption of Active Proxy Portfolio Shares, such creation or redemption may be exchanged for a Proxy Portfolio and/or cash with a value equal to the next-determined NAV. A series of Active Proxy Portfolio Shares will disclose the Proxy Portfolio on a daily basis, which, as described above, is designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares, instead of the actual holdings of the Investment Company, as provided by a series of Managed Fund Shares.

The Commission has previously approved[8] and noticed for immediate effectiveness[9] the listing and trading on the Exchange of series of Active Proxy Portfolio Shares under NYSE Arca Rule 8.601–E.

The Shares of the Fund will be issued by the Nushares ETF Trust (the ''Trust''), which is organized as a business trust under the laws of the Commonwealth of Massachusetts and registered with the Commission as an open-end management investment company.[10] Nuveen Fund Advisors,

[4] *See* Securities Exchange Act Release No. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR–NYSEArca–2019–95). Rule 8.601–E(c)(1) provides that ''[t]he term ''Active Proxy Portfolio Share'' means a security that (a) is issued by a investment company registered under the Investment Company Act of 1940 (''Investment Company'') organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio and/or cash with a value equal to the next determined net asset value (''NAV''); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder's request in return for the Proxy Portfolio and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.'' Rule 8.601–E(c)(2) provides that ''[t]he term ''Actual Portfolio'' means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company's calculation of NAV at the end of the business day.'' Rule 8.601–E(c)(3) provides that ''[t]he term ''Proxy Portfolio'' means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series.''

[5] The Commission has previously approved listing and trading on the Exchange of a number of issues of Managed Fund Shares under NYSE Arca Rule 8.600–E. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving listing of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR–NYSEArca–2010–118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF). The Commission also has approved a proposed rule change relating to generic listing standards for Managed Fund Shares. Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (SR–NYSEArca–2015–110) (amending NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares).

[6] NYSE Arca Rule 8.600–E(c)(2) defines the term ''Disclosed Portfolio'' as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day. NYSE Arca Rule 8.600–E(d)(2)(B)(i) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

[7] A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N–CSR under the 1940 Act. Information reported on Form N–PORT for the third month of a fund's fiscal quarter will be made publicly available 60 days after the end of a fund's fiscal quarter. Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a series of Active Proxy Portfolio Shares' Statement of Additional Information (''SAI''), its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A series of Active Proxy Portfolio Shares' SAI and Shareholder Reports will be available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

[8] *See* Securities Exchange Act Release Nos. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR–NYSEArca–2019–95) (Notice of Filing of Amendment No. 6 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 6, to Adopt NYSE Arca Rule 8.601–E to Permit the Listing and Trading of Active Proxy Portfolio Shares and To List and Trade Shares of the Natixis U.S. Equity Opportunities ETF Under Proposed NYSE Arca Rule 8.601–E) (''Natixis Order''); 89192 (June 30, 2020), 85 FR 40699 (July 7, 2020) (SR–NYSEArca–2019–96) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to List and Trade Two Series of Active Proxy Portfolio Shares Issued by the American Century ETF Trust under NYSE Arca Rule 8.601–E); 89191 (June 30, 2020), 85 FR 40358 (July 6, 2020) (SR–NYSEArca–2019–92) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Four Series of Active Proxy Portfolio Shares Issued by T. Rowe Price Exchange-Traded Funds, Inc. under NYSE Arca Rule 8.601–E); 89438 (July 31, 2020), 85 FR 47821 (August 6, 2020) (SR–NYSEArca–2020–51) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of Natixis Vaughan Nelson Select ETF and Natixis Vaughan Nelson MidCap ETF under NYSE Arca Rule 8.601–E). *See also* Securities Exchange Act Release Nos. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (SR–CboeBZX–2019–107) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to Adopt Rule 14.11(m), Tracking Fund Shares, and to List and Trade Shares of the Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF).

[9] *See* Securities Exchange Act Release No. 92104 (June 3, 2021), 86 FR 30635 (June 9, 2021) (NYSEArca–2021–46) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Nuveen Santa Barbara Dividend Growth ETF, Nuveen Small Cap Select ETF, and Nuveen Winslow Large-Cap Growth ESG ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares).

[10] The Trust is registered under the 1940 Act. On March 10, 2021, the Trust filed a registration statement on Form N–1A under the 1940 Act relating to the Fund (File No. 811–23161) (the ''Registration Statement''). The Trust filed an application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–15199), dated February 5, 2021 and amended the application on March 16, 2021 (the ''Application''). *See* Investment Company Act Release No. 34243 (April 8, 2021). On May 4, 2021, the Commission issued an order (the ''Exemptive Order'') under the

LLC will be the investment adviser to the Fund (the ''Adviser''). Nuveen Asset Management, LLC will be the sub-adviser (the ''Sub-Adviser'') for the Fund. Brown Brothers Harriman will serve as the Fund's transfer agent, custodian, and will conduct certain administrative functions. Nuveen Securities, LLC will act as the distributor (the ''Distributor'') for the Fund.

Commentary .04 to NYSE Arca Rule 8.601–E provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company's Actual Portfolio and/or Proxy Portfolio. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Actual Portfolio and/or Proxy Portfolio or has access to non-public information regarding the Investment Company's Actual Portfolio and/or Proxy Portfolio or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio and/or Proxy Portfolio or changes thereto. Commentary .04 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Rule 5.2–E(j)(3); however, Commentary .04, in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer, reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds.[11] Commentary .04 is also similar to Commentary .06 to Rule 8.600–E related to Managed Fund Shares, except that Commentary .04 relates to establishment and maintenance of a ''fire wall'' between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, applicable to an Investment Company's Actual Portfolio and/or Proxy Portfolio or changes thereto, and not just to the underlying portfolio, as is the case with Managed Fund Shares.

In addition, Commentary .05 to Rule 8.601–E provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's Actual Portfolio or the Proxy Portfolio or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio or Proxy Portfolio.

The Adviser and Sub-Adviser are not registered as broker-dealers but are affiliated with broker-dealers. The Adviser and Sub-Adviser have implemented and will maintain a ''fire wall'' with respect to such broker-dealer affiliates regarding access to information concerning the composition of and/or changes to the Fund's Actual Portfolio and/or Proxy Portfolio.

In the event (a) the Adviser and/or Sub-Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a ''fire wall'' with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's Actual Portfolio and/or Proxy Portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's Actual Portfolio and/or Proxy Portfolio or changes thereto. Any person related to the Adviser, Sub-Adviser, or the Fund who makes decisions pertaining to the Fund's Actual Portfolio or the Proxy Portfolio or has access to non-public information regarding the Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto are subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto.

In addition, any person or entity, including any service provider for the Fund, who has access to non-public information regarding the Fund's Actual Portfolio or the Proxy Portfolio or changes thereto, will be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Fund's Actual Portfolio and/or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity has erected and will maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to the Fund's Actual Portfolio and/or Proxy Portfolio.

Description of the Fund

According to the Registration Statement, the Adviser will identify a Proxy Portfolio for the Fund, which is designed to closely track the daily performance of the Fund. The Fund's Proxy Portfolio will be constructed to replicate the daily performance of the Fund's Actual Portfolio through a factor model analysis of the Fund's Actual Portfolio and will only include securities and investments in which the Fund may invest. However, while the Proxy Portfolio and the Actual Portfolio will likely hold some or many of the same securities, the Proxy Portfolio and the Fund's Actual Portfolio may not include identical securities. The composition of the Fund's Proxy Portfolio will be published on the

1940 Act granting the exemptions requested in the Application (Investment Company Act Release No. 34265, May 4, 2021). Investments made by the Fund will comply with the conditions set forth in the Application and the Exemptive Order. *See e.g.,* note 15, *infra.* The description of the operation of the Fund herein is based, in part, on the Registration Statement and the Application. The Exchange will not commence trading in Shares of the Fund until the Registration Statement is effective.

[11] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel will be subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

Fund's website each Business Day [12] and will include the following information for each portfolio holding in the Proxy Portfolio: (1) Ticker symbol; (2) CUSIP or other identifier; (3) description of holding; (4) quantity of each security or other asset held; and (5) percentage weight of the holding in the Proxy Portfolio. The Proxy Portfolio will be reconstituted daily, and the Adviser will not make intra-day changes to the Proxy Portfolio except to correct errors in the published Proxy Portfolio.

In addition to the Proxy Portfolio, the Fund's website will publish a variety of other information metrics regarding the relative behavior of the Proxy Portfolio and the Actual Portfolio, including daily disclosure of the ''Proxy Overlap'' [13] and the ''Tracking Error'' [14] for the Fund.

Nuveen Growth Opportunities ETF

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.[15] Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement.

According to the Registration Statement, the Fund's investment objective is to seek long-term capital appreciation. The Fund will primarily invest in exchange-traded equity securities of U.S. companies with market capitalizations of at least $1 billion that exhibit ESG characteristics, as identified by the Sub-Adviser. The Fund will normally invest at least 80% of the sum of its net assets in exchange-traded equity securities of between 40 to 65 companies with large capitalizations, primarily in the information technology sector, at the time of purchase.

Investment Restrictions

The Shares of the Fund will conform to the initial and continued listing criteria under Rule 8.601–E. The Fund's holdings will be limited to and consistent with permissible holdings as described in the Application and Exemptive Order and all requirements in the Application and Exemptive Order.[16]

The Fund's investments, including derivatives, will be consistent with its investment objectives [sic] and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* $2\times$ or $-3\times$) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).[17]

Creations and Redemptions of Shares

According to the Registration Statement, the Trust will issue and sell Shares of the Fund only in specified minimum size ''Creation Units'' through the Distributor on a continuous basis at their NAV next determined after receipt of an order in proper form on any Business Day. The NAV of the Fund's Shares will be calculated each Business Day as of the close of regular trading on the Exchange, ordinarily 4:00 p.m. E.T. A Creation Unit will generally consist of at least 10,000 Shares.

According to the Registration Statement, Shares of the Fund will be purchased and redeemed in Creation Units. Creation Units are typically purchased and redeemed in-kind, but they may also be purchased and redeemed, in whole or in part, for cash in the Adviser's discretion. Accordingly, purchasers will generally be required to purchase Creation Units by making an in-kind deposit of specified instruments (the ''Deposit Securities'') and/or the cash value of the Deposit Securities (''Deposit Cash''), and shareholders redeeming their Shares will generally receive an in-kind transfer of Deposit Securities and/or Deposit Cash. The names and quantities of the instruments that constitute the Deposit Securities will be the same as the Fund's Proxy Portfolio, except to the extent purchases and redemptions are made entirely or in part on a cash basis.

Creation Units of the Fund may be purchased and/or redeemed entirely for cash in the Adviser's discretion. When full or partial cash purchases or redemptions of Creation Units are available or specified for the Fund, they will be effected in essentially the same manner as in-kind purchases or redemptions thereof. The Fund may determine, upon receiving a purchase or redemption order from an Authorized Participant, to have the purchase or redemption, as applicable, be made entirely or in part in cash.[18]

If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Deposit Securities and/or Deposit Cash (together, the ''Basket''), the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Component'' or ''Cash Redemption Component'').

Each Business Day, prior to the opening of trading on the Exchange, the Fund will publish the names and quantities of the instruments comprising the Basket (*i.e.,* the Deposit Securities and/or the Deposit Cash), as well as the estimated Cash Component and Cash Redemption Component (if any), for that day through the National Securities Clearing Corporation or another method of public dissemination. The published Basket will apply until a new Basket is announced on the following Business Day, and there will be no intra-day changes to the Basket except to correct errors in the published Basket. The Basket will be published each Business Day regardless of whether the Fund decides to issue or redeem Creation Units entirely or in part on a cash basis.

All orders to purchase or redeem Creation Units must be placed with the Distributor by or through an Authorized Participant. Orders to purchase or

[12] ''Business Day'' is defined to mean any day that the Exchange is open, including any day when the Fund satisfies redemption requests as required by Section 22(e) of the 1940 Act.

[13] According to the Registration Statement, ''Proxy Overlap'' is the percentage weight overlap between the holdings of the Proxy Portfolio and the Actual Portfolio that formed the basis for the Fund's calculation of NAV at the end of the prior Business Day.

[14] According to the Registration Statement, ''Tracking Error'' is the standard deviation over the past three months of the daily proxy spread (*i.e.,* the difference, in percentage terms, between the Proxy Portfolio per share NAV and that of the Actual Portfolio at the end of the trading day).

[15] Pursuant to the Application and Exemptive Order, the permissible investments for the Fund include only the following instruments: ETFs traded on a U.S. exchange; exchange-traded notes (''ETNs'') traded on a U.S. exchange; U.S. exchange-traded common stocks; common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares (''foreign common stocks'') in the Exchange's Core Trading Session (normally, 9:30 a.m. to 4:00 p.m. Eastern time (''E.T.'')); U.S. exchange-traded preferred stocks; U.S. exchange-traded American Depositary Receipts (''ADRs''); U.S. exchange-traded real estate investment trusts; U.S. exchange-traded commodity pools; U.S. exchange-traded metals trusts; U.S. exchange-traded currency trusts; and U.S. exchange-traded futures that trade contemporaneously with the Fund's Shares. In addition, the Fund may hold cash and cash equivalents (short-term U.S. Treasury securities, government money market funds, and repurchase agreements). Pursuant to the Application and Exemptive Order, the Fund will not hold short positions or invest in derivatives other than U.S. exchange-traded futures, will not borrow for investment purposes, and will not purchase any securities that are illiquid investments at the time of purchase.

[16] *Id.*

[17] The Fund's broad-based securities benchmark index will be identified in a future amendment to its Registration Statement following the Fund's first full calendar year of performance.

[18] The Adviser represents that, to the extent the Trust effects the creation or redemption of Shares in cash on any given day, such transactions will be effected in the same manner for all Authorized Participants placing trades with the Fund on that day.

redeem Creation Units will be accepted until the ''Cut-Off Time,'' generally 3:00 p.m. E.T. The date on which an order to purchase or redeem Creation Units is received and accepted is referred to as the ''Order Placement Date.'' All Creation Unit orders must be received by the Distributor no later than the Cut-Off Time in order to receive the NAV determined on the Order Placement Date. When the Exchange closes earlier than normal, the Fund may require orders for Creation Units to be placed earlier in the Business Day.

Availability of Information

The Fund's website (*www.nuveen.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's website will include on a daily basis, per Share for the Fund, the prior Business Day's NAV and the ''Closing Price'' or ''Bid/Ask Price,'' [19] and a calculation of the premium/discount of the Closing Price or Bid/Ask Price against such NAV.[20] The Adviser has represented that the Fund's website will also provide: (1) Any other information regarding premiums/discounts as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended, and (2) any information regarding the bid/ask spread for the Fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended. The Fund's website also will disclose the information required under Rule 8.601–E(c)(3).[21] The website and information will be publicly available at no charge.

The identity and quantity of investments in the Proxy Portfolio for the Fund will be publicly available on the Fund's website before the commencement of trading in Shares on each Business Day. The website will also include information relating to the Proxy Overlap and Tracking Error for the Fund, as discussed above.

Typical mutual fund-style annual, semi-annual and quarterly disclosures contained in the Fund's Commission filings will be provided on the Fund's website on a current basis.[22] Thus, the Fund will publish the portfolio contents of its Actual Portfolio on a periodic basis, and no less than 60 days after the end of every fiscal quarter.

Investors can also obtain the Fund's SAI, Shareholder Reports, Form N–CSR, N–PORT, and Form N–CEN. The prospectus, SAI, and Shareholder Reports are available free upon request, and those documents and the Form N–CSR, N–PORT, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website. The Exchange also notes that pursuant to the Application, the Fund must comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information.

Information regarding the market price of Shares and trading volume in Shares, will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and U.S. exchange-traded instruments (excluding futures contracts) will be available via the Consolidated Tape Association (''CTA'') high-speed line, from the exchanges on which such securities trade, or through major market data vendors or subscription services. Quotation and last sale information for futures contracts will be available from the exchanges on which they trade. Intraday price information for all exchange-traded instruments, which include all eligible instruments except cash and cash equivalents, will be available from the exchanges on which they trade, or through major market data vendors or subscription services. Intraday price information for cash equivalents is available through major market data vendors, subscription services and/or pricing services.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[23] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601–E(d)(2)(D), which sets forth circumstances under which Shares of the Fund will be halted.

Specifically, Rule 8.601–E(d)(2)(D) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. If the Exchange becomes aware that the NAV, Proxy Portfolio, or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio, or Actual Portfolio is available to all market participants at the same time.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace in all trading sessions in accordance with NYSE Arca Rule 7.34–E(a). As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.601–E. The Exchange has appropriate rules to facilitate

[19] The records relating to Bid/Ask Prices will be retained by the Fund or its service providers. The ''Bid/Ask Price'' is the midpoint of the highest bid and lowest offer based upon the National Best Bid and Offer as of the time of calculation of the Fund's NAV. The ''National Best Bid and Offer'' is the current national best bid and national best offer as disseminated by the Consolidated Quotation System or UTP Plan Securities Information Processor. The ''Closing Price'' of Shares is the official closing price of the Shares on the Exchange.

[20] The ''premium/discount'' refers to the premium or discount to the NAV at the end of a trading day and will be calculated based on the last Bid/Ask Price or the Closing Price on a given trading day.

[21] *See* note 4, *supra*. Rule 8.601–E (c)(3) provides that the website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the 1940 Act applicable to such series, including the following, to the extent applicable:

(i) Ticker symbol;

(ii) CUSIP or other identifier;

(iii) Description of holding;

(iv) Quantity of each security or other asset held; and

(v) Percentage weighting of the holding in the portfolio.

[22] *See* note 7, *supra*.

[23] *See* NYSE Arca Rule 7.12–E.

trading in the Shares during all trading sessions.

A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. In addition, pursuant to Rule 8.601–E(d)(1)(B), the Exchange, prior to commencement of trading in the Shares, will obtain a representation from the Trust that the NAV per Share of the Fund will be calculated daily and that the NAV, Proxy Portfolio, and the Actual Portfolio for the Fund will be made available to all market participants at the same time.

With respect to Active Proxy Portfolio Shares, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and the Financial Industry Regulatory Authority, Inc. (''FINRA'') will continue to monitor Exchange members for compliance with such requirements.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[24] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and underlying exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[25]

The Adviser will make available daily to FINRA and the Exchange the Actual Portfolio of the Fund, upon request, in order to facilitate the performance of the surveillances referred to above.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Commentary .03 to NYSE Arca Rule 8.601–E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares.

The Exchange will utilize its existing procedures to monitor issuer compliance with the requirements of Rule 8.601–E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the issuer of a series of Active Proxy Portfolio Shares, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601–E. The Exchange notes that Commentary .01 to Rule 8.601–E requires an issuer of Active Proxy Portfolio Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601–E. In addition, the Exchange will require issuers to represent that they will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. As part of its surveillance procedures, the Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601–E.

With respect to the Fund, all statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange. The Exchange will obtain a representation from the Trust, prior to commencement of trading in the Shares of the Fund, that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[26] in general, and furthers the objectives of Section 6(b)(5) of the Act,[27] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[28]

With respect to the proposed listing and trading of Shares of the Fund, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.601–E.

The Fund's holdings will conform to the permissible investments as set forth

[24] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[25] For a list of the current members of ISG, *see www.isgportal.org.*

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

[28] The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act, as provided by NYSE Arca Rule 5.3–E.

in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.[29]

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and underlying exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The daily dissemination of the identity and quantity of Proxy Portfolio component investments, together with the right of Authorized Participants to create and redeem each day at the NAV, will be sufficient for market participants to value and trade Shares in a manner that will not lead to significant deviations between the Shares' Bid/Ask Price and NAV.

The Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2 × or −3 ×) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the Trust that the NAV per Share of the Fund will be calculated daily and that the NAV, Proxy Portfolio, and Actual Portfolio for the Fund will be made available to all market participants at the same time. Investors can obtain the Fund's SAI, shareholder reports, and its Form N–CSR, Form N–PORT, and Form N–CEN. The Fund's SAI and shareholder reports will be available free upon request from the Fund, and those documents and the Form N–CSR, Form N–PORT, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website.

Commentary .03 to NYSE Arca Rule 8.601–E provides that the Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares. With respect to the Fund, the Adviser will make available daily to FINRA and the Exchange the portfolio holdings of the Fund upon request in order to facilitate the performance of the surveillances referred to above.

The Exchange will utilize its existing procedures to monitor compliance with the requirements of Rule 8.601–E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the Trust, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601–E. The Exchange notes that Commentary .01 to Rule 8.601–E requires the issuer of the Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601–E. In addition, the Exchange will require the issuer to represent that it will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. The Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601–E.

In addition, with respect to the Fund, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency.

Quotation and last sale information for the Shares and U.S. exchange-traded instruments (excluding futures contracts) will be available via the CTA high-speed line, from the exchanges on which such securities trade, or through major market data vendors or subscription services. Quotation and last sale information for futures contracts will be available from the exchanges on which they trade. Intraday price information for all exchange-traded instruments, which include all eligible instruments except cash and cash equivalents, will be available from the exchanges on which they trade, or through major market data vendors or subscription services. Intraday price information for cash equivalents is available through major market data vendors, subscription services and/or pricing services.

The website for the Fund will include a form of the prospectus that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601–E(d)(2)(D), which sets forth circumstances under which Shares of the Fund will be halted. In addition, as noted above, investors will have ready access to the Proxy Portfolio and quotation and last sale information for the Shares. The identity and quantity of investments in the Proxy Portfolio will be publicly available on the Fund's website before the commencement of trading in Shares on each Business Day. The Shares will conform to the initial and continued listing criteria under Rule 8.601–E.[30]

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.[31] Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that

[29] *See* note 15, *supra.*

[30] *See* note 4, *supra.*

[31] *See* note 15, *supra.*

will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange will obtain a representation from the Adviser, prior to commencement of trading in the Shares of the Fund, that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change would permit listing and trading of an additional actively-managed ETF that has characteristics different from existing actively-managed and index ETFs and would introduce additional competition among various ETF products to the benefit of investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[32] and Rule 19b–4(f)(6) thereunder.[33]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[34] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that the Commission has noticed for immediate effectiveness a proposed rule change to permit listing and trading on the Exchange of Active Proxy Portfolio Shares similar to the Fund.[35] The proposed listing rule for the Fund raises no novel legal or regulatory issues. Thus, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[36]

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–NYSEArca–2021–77 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–2021–77. 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–2021–77 and should be submitted on or before October 8, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–20081 Filed 9–16–21; 8:45 am]

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[32] 15 U.S.C. 78s(b)(3)(A).

[33] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[34] 17 CFR 240.19b–4(f)(6)(iii).

[35] *See supra* note 9.

[36] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92946; File No. SR–CboeBZX–2021–060]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Reflect an Amendment to the Application and Exemptive Order Governing the Following Funds, Shares of Which Are Listed and Traded on the Exchange Under BZX Rule 14.11(m): Fidelity Growth Opportunities ETF, Fidelity Magellan ETF, Fidelity Real Estate Investment ETF, Fidelity Small-Mid Cap Opportunities ETF, Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF

September 13, 2021.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 31, 2021, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to reflect an amendment to the Application and Exemptive Order governing the following funds, shares of which are listed and traded on the Exchange under BZX Rule 14.11(m): Fidelity Growth Opportunities ETF, Fidelity Magellan ETF, Fidelity Real Estate Investment ETF, Fidelity Small-Mid Cap Opportunities ETF, Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 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

The Exchange adopted BZX Rule 14.11(m) for the purpose of permitting the listing and trading, or pursuant to unlisted trading privileges (''UTP''), of Tracking Fund Shares, which are securities issued by an actively managed open-end management investment company.[4] Exchange Rule 14.11(m)(2)(A) requires the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Tracking Fund Shares on the Exchange. Pursuant to this provision, the Exchange submitted proposals to list and trade shares (''Shares'') of Tracking Funds Shares of the following funds listed and traded on the Exchange under BZX Rule 14.11(m): Fidelity Growth Opportunities ETF, Fidelity Magellan ETF, Fidelity Real Estate Investment ETF, Fidelity Small-Mid Cap Opportunities ETF, Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF (each, a ''Fund'' and, together the ''Funds'').[5] The Exchange proposes to reflect an amendment to the Prior Exemptive Order (as defined below) related to the listing and trading of these Funds filed by, among others, Fidelity Beach Street Trust (the ''Issuer'') as follows.

The Issuer filed a ninth amended application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (the ''Prior Application'').[6] On December 10, 2019, the Commission issued an order (the ''Prior Exemptive Order'') under the 1940 Act granting the exemptions requested in the Application.[7]

Under the Prior Exemptive Order, the Funds are required to publish a basket of securities and cash that, while different from the Fund's portfolio, is designed to closely track its daily performance (*i.e.,* the Tracking Basket). The Prior Application stated that the Tracking Basket will solely consist of a combination of (i) select recently disclosed portfolio holdings (''Strategy Components''); (ii) liquid U.S. exchange-traded funds (''ETFs'') that convey information about the types of instruments (that are not otherwise fully represented by the Strategy Components) in which a Fund invests (''Representative ETFs''); and (iii) cash and cash equivalents. As set forth in the Approval Order and in the Notice, investments made by the Funds will comply with the conditions set forth in the Prior Application and the Prior Exemptive Order.

On October 30, 2020, as amended June 30, 2021, the Issuer sought to

[4] *See* Securities Exchange Act Release No. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (SR–CboeBZX–2019–107) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to Adopt Rule 14.11(m), Tracking Fund Shares, and to List and Trade Shares of the Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF (''Approval Order''')). Rule 14.11(m)(3)(A) provides that ''[t]he term ''Tracking Fund Share'' means a security that (i) represents an interest in an investment company registered under the Investment Company Act of 1940 (''Investment Company'') organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket and/or a cash amount with a value equal to the next determined net asset value; (iii) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified Tracking Basket and/or a cash amount with a value equal to the next determined net asset value; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter. Rule 14.11(m)(3)(E) provides that ''[t]he term ''Tracking Basket'' means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the Investment Company Act of 1940 applicable to a series of Tracking Fund Shares.''

[5] On May 15, 2020, in conjunction with its approval of Rule 14.11(m), the Commission approved the proposed rule change relating to the listing and trading of shares of Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF. *Id.* The Commission published the notice of filing and immediate effectiveness relating to the rule change to list and trade shares of the Fidelity Growth Opportunities ETF, Fidelity Magellan ETF, Fidelity Real Estate Investment ETF, and Fidelity Small-Mid Cap Opportunities ETF on November 30, 2020. *See* Securities Exchange Release No. 90530 (November 30, 2020), 85 FR 78366 (December 4, 2020) (SR–CboeBZX–2020–085) (''Notice'').

[6] *See* File No. 812–14364, dated November 8, 2019.

[7] *See* Investment Company Act Release No. 33712, December 10, 2019.

amend the Prior Exemptive Order to permit the Issuer to also select securities from the universe from which a Fund's investments are selected such as a broad-based market index (''Investment Universe'') in the Fund's Tracking Basket.[8] On August 5, 2021, the Commission issued an amended order that, among other things, permits the Issuer to include select securities from the Fund's Investment Universe in the Fund's Tracking Basket (the ''Updated Exemptive Order'').[9] Accordingly, the Funds will comply with this condition of the Updated Application and the Updated Exemptive Order. Except for the change noted above, all other representations made in the respective rule filings remain unchanged and will continue to constitute continuing listing requirements for the Funds. The Funds will also continue to comply with the requirements of Rule 14.11(m).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed revision is intended to reflect the change in the Updated Application and the Updated Exemptive Order that permits the Issuer to include select securities from the Fund's Investment Universe in the Fund's Tracking Basket. The proposed rule change would permit the Funds to operate consistent with this updated condition in the Updated Application and the Updated Exemptive Order. Furthermore, Exchange Rule 14.11(m)(4)(B)(iii) provides that the Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Tracking Fund Shares pursuant to Rule 14.12 if, among other things, the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission of the Commission Staff under the 1940 Act to the Investment Company with respect to the series of Tracking Funds Shares. Therefore, the proposed rule change would allow the Exchange to enforce compliance by its members and persons associated with its members, as provided in Section 6(b)(1) of the Act.[12] Except for the changes noted above, all other representations made in the respective rule filings remain unchanged and, as noted, will continue to constitute continuing listing requirements for the Funds.

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. As noted, the purpose of the filing is to reflect an amendment to the Prior Exemptive Order governing the listing and trading of these Funds. To the extent that the proposed rule change would continue to permit listing and trading of another type of actively-managed ETF that has characteristics different from existing actively-managed and index ETFs, the Exchange believes that the proposal would benefit investors by continuing to promote competition among various ETF products.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the Funds will continue to comply with the requirements of BZX Rule 14.11(m) and that waiver of the operative delay would allow the Funds to operate in a manner consistent with the Updated Application and Updated Exemptive Order. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[16]

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

[8] *See* File No. 812–15175, dated June 30, 2021. The amendment also sought to provide for the use of creation baskets that include instruments that are not included, or that are included with different weightings, in the Fund's Tracking Basket. Accordingly, the Exchange has filed a separate proposed rule change to amend Rule 14.11 to provide for the use of creation baskets that include instruments that are not included, or that are included with different weightings, in the Fund's Tracking Basket. *See* Securities Exchange Act No. 92626 (August 10, 2021) 86 FR 45792 (August 16, 2021) (SR–CboeBZX–2021–053) (Notice of Filing of a Proposed Rule Change To Amend Rule 14.11(m) (Tracking Fund Shares) To Provide for the Use of Custom Baskets Consistent With the Exemptive Relief Issued Pursuant to the Investment Company Act of 1940 Applicable to a Series of Tracking Fund Shares).

[9] *See* Investment Company Act Release No. 34350, August 5, 2021.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(1).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–CboeBZX–2021–060 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–CboeBZX–2021–060. 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–CboeBZX–2021–060 and should be submitted on or before October 8, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–20079 Filed 9–16–21; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92966; File No. 265–33]

Asset Management Advisory Committee; Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: Notice is being provided that the Securities and Exchange Commission Asset Management Advisory Committee (''AMAC'') will hold a public meeting on September 27, 2021, by remote means. The meeting will begin at 9:30 a.m. (ET) and will be open to the public via webcast on the Commission's website at *www.sec.gov.* Persons needing special accommodations to take part because of a disability should notify the contact person listed below. The public is invited to submit written statements to the Committee. The meeting will include a discussion of matters in the asset management industry relating to: The Private Investments Subcommittee, including its potential recommendations; and the Evolution of Advice and the Small Advisers and Small Funds Subcommittees, including panel discussions.

DATES: The public meeting will be held on September 27, 2021. Written statements should be received on or before September 24, 2021.

ADDRESSES: The meeting will be held by remote means and webcast on *www.sec.gov.* Written statements may be submitted by any of the following methods. To help us process and review your statement more efficiently, please use only one method. At this time, electronic statements are preferred.

Electronic Statements

- Use the Commission's internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email message to *rule-comments@sec.gov.* Please include File Number 265–33 on the subject line; or

Paper Statements

- Send paper statements to Vanessa Countryman, Federal Advisory Committee Management Officer, Securities and Exchange Commission, and 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. 265–33. This file number should be included on the subject line if email is used. The Commission will post all statements on the Commission's website at (*http://www.sec.gov/comments/265-33/265-33.htm*).

Statements also will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Room 1580, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. For up-to-date information on the availability of the Public Reference Room, please refer to *https://www.sec.gov/fast-answers/answerspublicdocshtm.html* or call (202) 551–5450.

All statements received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Christian Broadbent, Senior Special Counsel, Neil Lombardo, Senior Special Counsel, or Jay Williamson, Branch Chief, at (202) 551–6720, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.-App. 1, and the regulations thereunder, Sarah ten Siethoff, Designated Federal Officer of the Committee, has ordered publication of this notice.[1]

Dated: September 13, 2021.

Vanessa A. Countryman,

Committee Management Officer.

[FR Doc. 2021–20085 Filed 9–16–21; 8:45 am]

BILLING CODE 8011–01–P

[1] Due to scheduling challenges, earlier advance publication was not possible.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92965; File No. SR–CboeEDGA–2021–017]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 13.8 To Introduce a Product To Be Known as ''Cboe Premium Exchange Tools'' and To Amend Its Fee Schedule To Establish a Fee for a User Login That Elects To Subscribe to the Cboe Premium Exchange Tools

September 13, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 31, 2021, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') proposes to amend Rule 13.8 to introduce a new product to be known as ''Cboe Premium Exchange Tools'' and to amend its Fee Schedule to establish a fee for a user login that elects to subscribe to the Cboe Premium Exchange Tools. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt Rule 13.8(g) to introduce a new product to be known as Cboe Premium Exchange Tools, as further described below, and to amend its Fee Schedule to adopt a monthly fee assessed to users that elect to subscribe to such Cboe Premium Exchange Tools, effective August 31, 2021.

Cboe Premium Exchange Tools

Currently, Members,[5] Sponsored Participants,[6] and service bureaus are leveraging certain value-added tools (*i.e.,* Cboe Premium Exchange Tools) on the Exchange to obtain certain information free of charge. Particularly, Cboe Premium Exchange Tools offers an easily accessible internet-based tool that allows users access to certain execution information for their firm through a single interface. Now, the Exchange proposes to adopt Rule 13.8(g) to describe the Cboe Premium Exchange Tools in its Rules. Specifically, proposed Rule 13.8(g) provides that the Cboe Premium Exchange Tools is a web-based tool designed to give a subscribing user the ability to track latency statics of the user's logical order entry ports or execution information of the Member or a Sponsored Participant of the Member. The proposed rule also provides that a user may obtain historical reports of such execution information, as further described below.[7] Cboe Premium Exchange Tools is currently comprised of the following three reports: (i) Trade data report,[8] (ii) latency statistics report,[9] and (iii) volume history report.[10]

Trade Data Report

The trade data report offers the ability for a user to view and/or export its Member's and, if applicable, a Sponsored Participant of the Member, granular execution detail.[11] Specifically, the report currently includes the following information: Date, time, Member identifier, clearing member identifier, session, order identification, symbol, side (*i.e.,* buy, sell, sell short), price, quantity, capacity (*e.g.,* agent, principal), liquidity indicator (*i.e.,* adder or remover of liquidity), order type,[12] indicator as to whether order set or joined the national best bid or offer (''NBBO''),[13] and associated fee code(s). The information is provided in order to aid Members in conducting their own reconciliations and assist in report generation, and, unlike the Volume History Report, is available on an execution-by-execution basis.

Latency Statistics Report

The latency statistics report offers functionality to view latency statistics relating to logical order entry ports, including a Member's orders, acknowledgements, and cancels, including roundtrip data from into the edge network device and back, which accounts for latency within the Exchange order gateways and matching engines. Specifically, the latency statistics report includes the following information: (i) The roundtrip time between the order entering the Exchange's network and the time the order acknowledgement leaves the Exchange's network, (ii) the roundtrip time between an order cancellation request and the time the order cancellation request acknowledgement leaves the Exchange's network, (iii) the roundtrip time between an order entering the Exchange's network and the time that the order appears on the Multicast PITCH feed, (iv) the roundtrip time for a Transmission Control

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Exchange Rule 1.5(n).

[6] *See* Exchange Rule 1.5(z).

[7] All information available to Members as described herein is historical information.

[8] Trade Data Reports may be obtained by a Member, or if authorized to do so a Sponsored Participant.

[9] Latency Statistics Reports may be obtained by a Member, Sponsored Participant or service bureaus as it relates to their respective logical order entry ports.

[10] Volume History Reports may be obtained by a Member.

[11] Sponsored Participants may also subscribe to the Trade Data Report, provided that its Sponsoring Member provides the Exchange authorization to do so. Trade Data Reports provided to Sponsored Participants only include execution detail related to the Sponsored Participant.

[12] *See* Exchange Rule 11.8.

[13] Hidden orders that neither set or join the NBBO are identified as such within the report.

Protocol (''TCP'') [14] message sent by the Exchange to be acknowledged by the Member, and (v) averages a Member can expect for items (i) through (iii) across their own ports and across the entire system (*i.e.,* across all Members). A Member, service bureau, or Sponsored Participant may view the latency statistics for orders that they send to the Exchange through their own respective logical order entry ports. The information included in the latency statistics report is designed to give users insight into the performance characteristics of their logical order entry ports.

Volume History Report

The volume history report provides users the functionality to view the Member's, high level volume history on the Exchange, as well as more granular added, removed, and routed orders at a per Tape and MPID level or a per security level for the purpose of tracking and measuring outcomes.[15] The tools offer functionality to allow a user to view aggregated volume history reports on behalf of the Member or a Sponsored Participant of the Member for the purpose of firm or client-level reporting, administration, and risk management.

Cboe Premium Exchange Tools Fee

The Exchange also proposes to adopt a fee applicable to users that subscribe to the proposed Cboe Premium Exchange Tools. Specifically, as proposed, the Exchange would assess a monthly fee of $40 for each user login that subscribes to any of the reports and services that comprise the Cboe Premium Exchange Tools. As discussed above, Premium Exchange Tools provides users with an easily accessible tool that allows them to access certain execution and latency information from a single interface and provides such information in a convenient, user-friendly format. Further, a number of enhancements have recently been made to the various reports and services included in the Cboe Premium Exchange Tools. For example, the trade data report has recently been enhanced to provide timestamps with microsecond granularity for added detail on a per trade basis. Therefore, the Exchange believes the assessment of such a fee aligns with the additional value and benefits provided to users that choose to subscribe to the Cboe Premium Exchange Tools. The Exchange also believes that the proposal is appropriate to balance the Exchange resource requirements in creating, managing, and supporting the services and reports provided by the Cboe Premium Exchange Tools.

The Cboe Premium Exchange Tools fee will be assessed to a user for the entire month regardless of when the user receives access to the Premium Exchange Tools. If a user obtains or cancels a subscription to the Cboe Premium Exchange Tools on or after the first business day of the month, the user will be required to pay the entire Cboe Premium Exchange Tools fee for that month.

The Exchange anticipates a number of users will subscribe to the Cboe Premium Exchange Tools. It is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make the reports or services available and that potential subscribers may purchase it only if they voluntarily choose to do so. Further, the Exchange notes that other exchanges offer similar products.[16]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[17] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[18] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities. The Exchange also believes the proposed rule change is consistent with the Section 6(b)(5) [19] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [20] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposal to adopt 13.8(g) to provide for the Cboe Premium Exchange Tools is reasonable for several reasons. First, certain of the underlying information available via the Cboe Premium Exchange Tools is otherwise generally available to users. While the proposal provides a value-added service by setting forth such information in a user-friendly format, the underlying data included in the trade data report and volume history report contains general Member-specific execution information to which a Member would have access to without subscribing to Premium Exchange Tools, (*e.g.,* via their own order entry ports which include Member-provided order instructions, exchange-sent acknowledgement messages, and drop copies). Moreover, the data included in the trade data report and volume history report is substantially similar to data offered in the Nasdaq TradeInfo tool, which provides detailed data on the status of orders executions, cancels and breaks, and generates reports for download, and allows the member to cancel or correct open orders.[21]

While certain underlying data included in the latency statistics report such as latency averages across the System is not otherwise available to Members, or where applicable, Sponsored Participants, or service bureaus, the Exchange notes such users can obtain similar information on their own latency statistics relating to their orders, acknowledgements, TCP messages, and cancels, including roundtrip data from out of their edge network device and back without subscribing to Premium Exchange Tools. Particularly, users are able to calculate these latencies on their own servers as the underlying transaction information is timestamped, which would similarly account for the latency throughout the Exchange side of the network (*i.e.,* the Exchange does not believe latency statistics calculated by users themselves would be materially different from the Exchange's calculations). The Exchange notes that

[14] TCP is a communications standard that enables application programs and computing devises to exchange messages over a network.

[15] Information included in the Volume History Report includes all activity, including that executed on behalf of Sponsored Participants. Execution volume made on behalf of a Sponsored Participant is not delineated within the Volume History Report.

[16] *See* the ''TradeInfo Fees'' offered on the Nasdaq Stock Exchange (''Nasdaq''), Nasdaq BX, Inc. (''Nasdaq BX''), and the Nasdaq PHLX LLC (''Phlx''), each of which assess a fee of $95 per user per month.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4).

[19] 15 U.S.C. 78f(b)(5).

[20] *Id.*

[21] *See* Securities and Exchange Act No. 90772 (December 22, 2020) 85 FR 86632 (December 30, 2020) (SR–NASDAQ–2020–088) (Proposed rule change describing the withdrawal of Nasdaq's QView product from sale and that the information included therein will continue to be available via TradeInfo).

although latency information related to averages across the system would not otherwise be available to Members, Sponsored Participants or service bureaus absent subscribing to Premium Exchange Tools, providing users such information is not novel as similar information was historically made available in an offering by Nasdaq. Specifically, prior to its decommission in December of 2020, Nasdaq provided summary latency statistics via its QView tool which provided members that subscribed to QView Latency Optics add-on service the ability to monitor three types of latency for order messages and compare that latency to the average on the Nasdaq System.[22] The specific latency statistics included: (i) The roundtrip time between order entry and receipt of acknowledgement; (ii) roundtrip time between order entry and the time that the order appears on the TotalView ITCH multicast feed; and (iii) the roundtrip time between the entry of an order cancellation request and the time that the message in reply is received by the client device.[23] Similarly as noted above, the Exchange's proposed latency statistics report provides users averages across the entire System for three types of latency: (i) The roundtrip time between the order entering the Exchange's network and the time the order acknowledgement leaves the Exchange's network, (ii) the roundtrip time between an order cancellation request and the time the order cancellation request acknowledgement leaves the Exchange's network, (iii) the roundtrip time between an order entering the Exchange's network and the time that the order appears on the Multicast PITCH feed. Even after QView was decommissioned, the underlying data needed to generate the latency statistics (other than for averages across the Nasdaq system) for each member was and continues to be available via the Nasdaq TradeInfo tool.[24]

The Exchange believes that the proposed fee for the Cboe Premium Exchange Tools is consistent with the Act in that it is reasonable, equitable, and not unfairly discriminatory. In particular, the Exchange believes that the proposed fee is reasonable because it is reasonably aligned with the value and benefits provided to users that choose to subscribe to the Cboe Premium Exchange Tools on the Exchange. As discussed above, Premium Exchange Tools provides users with an easily accessible tool that allows them to access certain execution and latency information from a single interface and provides such information in a convenient, user-friendly format. Also as described above, information provided by Premium Exchange Tools relates to the subscribing user's activity on the Exchange, and users may generally access and aggregate this information by other means, including its own internal systems, without a subscription to Premium Exchange Tools. As such, the Exchange believes that if a user determines that the fee is not cost-efficient for its needs, it may decline to subscribe to Premium Exchange Tools and access such information from other sources. Indeed, the Cboe Premium Tools is a completely voluntary product, and the Exchange is not required by any rule or regulation to offer the reports or services provided under the Cboe Premium Exchange Tools. Nonetheless, such tools may be beneficial to Members and non-Members as they provide various value-added Exchange reports and services. Providing the Cboe Premium Exchange Tools to users requires the Exchange to allocate additional resources to create, manage, and support the services and reports. Therefore, the Exchange believes that it is reasonable to assess a modest fee to users that subscribe to the Cboe Premium Exchange Tools.

The Exchange further believes the proposed fee is reasonable because the amount assessed is less than the analogous fees charged by Nasdaq, Nasdaq BX, and PHLX. The TradeInfo product offered by the aforementioned exchanges provides users the status of orders, executions, cancels and breaks, and provides the ability to cancel orders. Further, to view a variety of trading data, users can generate several different types of reports such as execution reports.[25] As described above, the Cboe Premium Exchange Tools will offer similar data to that provided by Nasdaq, Nasdaq BX, and PHLX while, the Exchange's proposed fee for the Cboe Premium Tools at $40 per month per user, is lower than each of the Nasdaq, Nasdaq BX, and PHLX fees for similar information which charge $95 per user.

The Exchange believes that the proposed fee is equitable and not unfairly discriminatory because it will apply to all Members and non-Members that choose to subscribe to the Cboe Premium Exchange Tools equally. As stated, the services and reports provided by the Cboe Premium Exchange Tools are completely optional and not necessary for trading. Rather, the Exchange voluntarily makes the Cboe Premium Exchange Tools available and users may choose to subscribe (and pay for) the Cboe Premium Exchange Tools based on their own individual business needs. Potential subscribers may subscribe to Cboe Premium Exchange Tools at any time if they believe it to be valuable or may decline to purchase such services and reports.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed Cboe Premium Exchange Tools will be available equally to all Members and non-Members that choose to subscribe to such tools. As stated, the Cboe Premium Exchange Tools are optional and Members and non-Members may choose to subscribe to such tools, or not, based on their view of the additional benefits and added value provided by utilizing the reports or services offered by the Cboe Premium Exchange Tools.

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, Nasdaq currently offers products that include similar information to that proposed under the Cboe Premium Exchange Tools. 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.'' The

[22] *See* Securities Exchange Act Release No. 68617 (January 10, 2013), 78 FR 3480 (January 16, 2013) (SR–Nasdaq–2013–005) (introducing the Latency Optics add-on). *See also* Securities Exchange Act Release No. 82003 (November 2, 2017), 82 FR 51894 (November 8, 2017) (SR–Nasdaq–2017–113) (proposed rule change that also describes the Latency Optics add-on service, which provided, among other things, subscribing members the ability to compare their latency to the average of the Nasdaq system).

[23] *Id.*

[24] Nasdaq similarly noted that users of TradeInfo are able to calculate latencies included in the Latency Optics add-on service as the underlying transaction information is timestamped. *See* Securities and Exchange Act No. 90772 (December 22, 2020) 85 FR 86632 (December 30, 2020) (SR–NASDAQ–2020–088).

[25] *See https://www.nasdaqtrader.com/Trader.aspx?id=tradeinfo.*

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'. . . .''. Accordingly, the Exchange does not believe its proposal 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

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 [26] and Rule 19b–4(f)(6) thereunder.[27]

A proposed rule change filed under Rule 19b–4(f)(6) [28] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [29] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has proposed to implement this proposed rule change on August 31, 2021 and has asked the Commission to waive the 30-day operative delay for this filing. The Exchange states that the proposed data to be included in the proposed Cboe Premium Exchange Tools is already generally available to all users without a subscription to Cboe Premium Exchange Tools and/or is substantially similar to information that was historically, or currently is, included in similar products offered on Nasdaq.[30] The Commission believes waiver of the operative delay will allow a description of Cboe Premium Exchange Tools product to be immediately reflected in the Exchange's rules and is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[31]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–CboeEDGA–2021–017 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–CboeEDGA–2021–017. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CboeEDGA–2021–017, and should be submitted on or before October 8, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–20083 Filed 9–16–21; 8:45 am]

BILLING CODE 8011–01–P

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived that requirement in this case.

[28] 17 CFR 240.19b–4(f)(6).

[29] 17 CFR 240.19b–4(f)(6)(iii).

[30] *See supra* notes 21–24.

[31] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92954; File No. SR–CboeBZX–2021–058]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees in BZX Rule 14.13 Applicable To Exchange-Traded Products Listed on the Exchange

September 13, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on August 30, 2021, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''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 BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the fees applicable to securities listed on the Exchange, which are set forth in BZX Rule 14.13.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Rule 14.13(b)(2)(E) related to refunds of the annual fees for listing on the Exchange where a class of securities is removed from listing during the year. Specifically, the Exchange is proposing to amend the rule to allow the Exchange to prorate and refund fees applicable to exchange-traded products (''ETPs'') [3] that have liquidated and as a result are delisted from the Exchange for the portion of the calendar year that such issue was listed on the Exchange, based on the percentage of trading days listed during that calendar year.

Rule 14.13(b)(2)(C) describes the annual fees applicable to issuers of ETPs listed on the Exchange. As provided in Rule 14.13(b)(2)(C)(ii), newly listed ETPs are subject to annual fees in the year of listing, prorated based on the number of trading days remaining in the calendar year. The annual fees for ETPs are billed in January for the forthcoming year. Currently, when an ETP liquidates, and as a result, is delisted from the Exchange, the issuer is responsible for the full year's annual fee as billed in January. The issuer receives no refund for amounts paid or reduction of amounts payable even though the ETP has liquidated. The Exchange proposes to amend Rule 14.13(b)(2)(C)(ii) [sic] to provide that the annual fees applicable to ETPs that have liquidated and as a result are delisted from the Exchange will be prorated for the portion of the calendar year that such issue was listed on the Exchange, based on days listed that calendar year. Thus, for example, if the issuer of an ETP has paid an annual fee of $4,000 as billed in January and such issue is liquidated and then delisted from the Exchange at the close of business on the 126th of 252 trading days in a year, the issuer would receive a refund of $2,000, which represents a pro rata credit of annual fees owed for the year. Any such refund will be payable in the month following delisting. Notwithstanding the proposed proration of the annual fees for ETPs, the Exchange will continue to be able to fund its regulatory obligations.

The Exchange intends to implement the proposed amendments to its listing fees immediately.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(4) [5] and 6(b)(5) [6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among issuers and it does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed amendment is reasonable, fair and equitable, and not an unfairly discriminatory allocation of fees and other charges because it would apply equally for all issuers. The Exchange believes that the proposed pro rata reduction of the annual fees as a result of liquidation and termination of an ETP is reasonable in that it constitutes a potential reduction in annual fees for ETPs that are liquidated and therefore are no longer collecting a management fee to pay for such expenses. Notwithstanding the proposed proration of the annual fees for ETPs, the Exchange will continue to be able to fund its regulatory obligations.

Based on the foregoing, the Exchange believes that the proposed rule change is 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 not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change burdens competition, but instead, enhances competition, as it will permit the Exchange to better compete with other exchanges with respect to fees changed [sic] in connection with listing ETPs. The Exchange does not believe the proposed amendments would burden intramarket competition as they would be available to all issuers uniformly.

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 [7] and paragraph (f) of Rule 19b–4 [8] 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.

[3] As defined in Rule 11.8(e)(1)(A), the term ''ETP'' means any security listed pursuant to Exchange Rule 14.11.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2021–058 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–CboeBZX–2021–058. 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–CboeBZX–2021–058 and should be submitted on or before October 8, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–20080 Filed 9–16–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–666; OMB Control No. 3235–0725]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

OWMI Contract Standard for Contractor Workforce Inclusion

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act) provided that certain agencies, including the Commission, establish an Office of Minority and Women Inclusion (OMWI).[1] Section 342(c)(2) of the Dodd-Frank Act requires the OMWI Director to include in the Commission's procedures for evaluating contract proposals and hiring service providers a written statement that the contractor shall ensure, to the maximum extent possible, the fair inclusion of women and minorities in the workforce of the contractor and, as applicable, subcontractors.

In addition, section 342(c)(3)(A) of the Dodd-Frank Act requires the OMWI Director to establish standards and procedures for determining whether an agency contractor or subcontractor ''has failed to make a good faith effort to include minorities and women'' in its workforce. Section 342(c)(3)(B)(i) provides that if the OMWI Director determines that a contractor has failed to make good faith efforts, the Director shall recommend to the agency administrator that the contract be terminated. Upon receipt of such a recommendation, section 342(c)(3)(B)(ii) provides that the agency administrator may terminate the contract, make a referral to the Office of Federal Contract Compliance Programs of the Department of Labor, or take other appropriate action. To implement the acquisition-specific requirements of Section 342(c) of the Dodd-Frank Act, the Commission adopted a Contract Standard for Contractor Workforce Inclusion (Contract Standard).

The Contract Standard, which is included in the Commission's solicitations and resulting contracts for services with a dollar value of $100,000 or more, contains a ''collection of information'' within the meaning of the Paperwork Reduction Act. The Contract Standard requires that a Commission contractor provide documentation, upon request from the OMWI Director, to demonstrate that it has made good faith efforts to ensure the fair inclusion of minorities in its workforce and, as applicable, to demonstrate its covered subcontractors have made such good faith efforts. The documentation requested may include, but is not limited to: (1) The total number of employees in the contractor's workforce, and the number of employees by race, ethnicity, gender, and job title or EEO–1 job category (*e.g.,* EEO–1 Report(s)); (2) a list of covered subcontract awards under the contract that includes the dollar amount of each subcontract, date of award, and the subcontractor's race, ethnicity, and/or gender ownership status; (3) the contractor's plan to ensure the fair inclusion of minorities and women in its workforce, including outreach efforts; and (4) for each covered subcontractor, the information requested in items 1 and 3 above. The OMWI Director will consider the information submitted in evaluating whether the contractor or subcontractor has complied with its obligations under the Contract Standard.

The information collection is mandatory.

Estimated number of respondents: Based on a review of the last two fiscal years since the most recent approval of this information collection, the Commission estimates that 175 contractors would be subject to the Contract Standard.[2] Approximately 102 of these contractors have 50 or more employees, while 73 have fewer than 50 employees.

Estimate of recordkeeping burden: The information collection under the Contract Standard imposes no new recordkeeping burden on the estimated

[9] 17 CFR 200.30–3(a)(12).

[1] 12 U.S.C. 5452.

[2] Unless otherwise specified, the term ''contractors'' refers to contractors and subcontractors.

102 contractors that have 50 or more employees. Such contractors are generally subject to recordkeeping and reporting requirements under the regulations implementing Title VII of the Civil Rights Act [3] and Executive Order 11246 (''E.O. 11246'').[4] Their contracts and subcontracts must include the clause implementing E.O. 11246—FAR 52.222–26, Equal Opportunity. In addition, contractors that have 50 or more employees (and a contract or subcontract of $50,000 or more) are required to maintain records on the race, ethnicity, gender, and EEO–1 job category of each employee under Department of Labor regulations implementing E.O. 11246.[5] The regulations implementing E.O. 11246 also require contractors that have 50 or more employees (and a contract or subcontract of $50,000 or more) to demonstrate that they have made good faith efforts to remove identified barriers, expand employment opportunities, and produce measurable results,[6] and to develop and maintain a written program, which describes the policies, practices, and procedures that the contractor uses to ensure that applicants and employees receive equal opportunities for employment and advancement.[7] In lieu of developing a separate plan for workforce inclusion, a contractor may submit its existing written program prescribed by the E.O. 11246 regulations as part of the documentation that demonstrates the contractor's good faith efforts to ensure the fair inclusion of minorities and women in its workforce. Thus, approximately 102 contractors are already required to maintain the information that may be requested under the Contract Standard.

The estimated 73 contractors that employ fewer than 50 employees are required under the regulations implementing E.O. 11246 to maintain records showing the race, ethnicity and gender of each employee. We believe that these contractors also keep job title information during the normal course of business. However, contractors that have fewer than 50 employees may not have the written program prescribed by the E.O. 11246 regulations or similar plan that could be submitted as part of the documentation to demonstrate their good faith efforts to ensure the fair inclusion of women and minorities in their workforces. Accordingly, contractors with fewer than 50 employees may have to develop a plan to ensure workforce inclusion of minorities and women.

In order to estimate the burden on contractors associated with developing a plan for ensuring the inclusion of minorities and women in their workforces, we considered the burden estimates for developing the written programs required under the regulations implementing E.O. 11246.[8] Based on OMWI's review of the plans and other documentation submitted by contractors with fewer than 50 employees to demonstrate compliance with the Contract Standard, we believe such contractors would require approximately 25 percent of the hours that contractors of similar size spend on developing the written programs required under the E.O. 11246 regulations. Accordingly, we estimate that contractors would spend about 18 hours of employee resources to develop a plan for workforce inclusion of minorities and women. This one-time implementation burden annualized would be 438 hours. After the initial development, we estimate that each contractor with fewer than 50 employees would spend approximately 8 hours each year updating and maintaining its plan for workforce inclusion of minorities and women. The Commission estimates that the annualized recurring burden associated with the information collection would be 365 hours. Thus, the Commission estimates the annual recordkeeping burden for such contractors would total 803 hours.

The Contract Standard requires contractors to maintain information about covered subcontractors' ownership status, workforce demographics, and workforce inclusion plans. Contractors would request this information from their covered subcontractors, who would have an obligation to keep workforce demographic data and maintain plans for workforce inclusion of minorities and women because the Contract Standard is included in their subcontracts. Based on data describing recent Commission subcontractor activity, we believe that few subcontractors will have subcontracts for services with a dollar value of $100,000 or more under Commission service contracts.[9] These subcontractors may already be subject to similar recordkeeping requirements as principal contractors. Consequently, we believe that any additional requirements imposed on subcontractors would not significantly add to the burden estimates discussed above.

Estimate of Reporting Burden: With respect to the reporting burden, we estimate that it would take all contractors on average approximately one hour to retrieve and submit to the OMWI Director the documentation specified in the proposed Contract Standard. We expect to request documentation from up to 50 contractors each year and therefore we estimate the total annual reporting burden to be 50 hours.

On July 8, 2021, the Commission published a notice in the **Federal Register** (86 FR 36167) of its intention to request an extension of this currently approved collection of information, and allowed the public 60 days to submit comments. The Commission received no comments.

Written comments continue to be invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* This information collection can be found by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent to: (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief

[3] 42 U.S.C. 2000e, *et seq.*

[4] Executive Order 11246, 30 FR 12,319 (Sept. 24, 1965).

[5] *See* 41 CFR 60–1.7.

[6] *See* 41 CFR 60–2.17(c).

[7] *See* 41 CFR part 60–2.

[8] According to the Supporting Statement for the OFCCP Recordkeeping and Requirements-Supply Service, OMB Control No. 1250–0003 (''Supporting Statement''), it takes approximately 73 burden hours for contractors with 1–100 employees to develop the initial written program required under the regulations implementing E.O. 11246. We understand the quantitative analyses prescribed by the Executive Order regulations at 41 CFR part 60–2 are a time-consuming aspect of the written program development. As there is no requirement to perform these types of quantitative analyses in connection with the plan for workforce inclusion of minorities and women under the Contract Standard, we believe the plan for workforce inclusion will take substantially fewer hours to develop. The Supporting Statement is available at *reginfo.gov.*

[9] A search of subcontract awards on the *usaspending.gov* website showed that three subcontractors in FY 2016 and six subcontractors in FY 2017 had subcontracts of $100,000 or more. *See* data on subcontract awards available at *http://usaspending.gov.*

Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549 or by sending an email to: *PRA_Mailboxes@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: September 14, 2021.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–20117 Filed 9–16–21; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2021–0025]

Request for Information on Potential Disability Insurance and Supplemental Security Income Demonstrations

AGENCY: Social Security Administration.

ACTION: Notice; request for information.

SUMMARY: We administer the Disability Insurance (DI) and Supplemental Security Income (SSI) programs to provide income support to people with disabilities. The Commissioner of Social Security is authorized to test new program rules to promote attachment to the labor force and increase the employment and self-sufficiency of individuals receiving or applying for DI or SSI benefits, including children and youth; and to coordinate planning between private and public welfare agencies to improve the administration and effectiveness of the DI, SSI, and related programs. This request for information (RFI) seeks public input on potential services, supports, or DI and SSI policy changes that could achieve these goals. The input we receive will inform our deliberations about possible future demonstrations and tests. We will also use the responses as reference material as we provide Congress technical advice regarding any potential renewal of the section 234 authorization.

DATES: To ensure that your comments are considered, we must receive them no later than November 16, 2021.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2021–0025 so that we may associate your comments with the correct **Federal Register** notice.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov*. Use the *Search* function to find docket number SSA–2021–0025 and then submit your comments. The system will issue you a tracking number to confirm your submission. You will not be able to view your comments immediately because we must post each submission manually. It may take up to a week for your comments to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Mail your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland, 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Jeffrey Hemmeter, Acting Deputy Associate Commissioner for Research, Demonstration, and Employment Support, Office of Retirement and Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 597–1815, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Purpose

Social Security pays benefits to more than 12 million adults ages 18 to 64 who are unable to work due to a disability [1] and to more than 1 million children with limited income and assets who have marked and severe functional limitations.[2] The Commissioner of Social Security is authorized to test new program rules to promote the labor force and increase the employment and self-sufficiency of individuals receiving or applying for DI or SSI benefits, including children and youth, and to coordinate planning between private and public welfare agencies to improve the administration and effectiveness of the DI, SSI, and related programs. This RFI offers interested parties, including States, community-based and other non-profit organizations, philanthropic organizations, researchers, and members of the public, the opportunity to provide information and recommendations on effective approaches for achieving these goals.

Background

We conduct demonstration projects under two authorities. Section 234 of the Social Security Act (Act) allows the Commissioner to test changes to the DI program designed to promote attachment to the labor force.[3] Section 234(d)(2) of the Act provides that the authority to initiate projects under section 234 terminates on December 31, 2021, and the authority to carry out such projects terminates on December 31, 2022, Second, Section 1110(a) of the Act allows us to enter into contracts, grants, and agreements to study a variety of topics related to reducing dependency on SSI, coordinating of social services, or improving the administration of our programs, while section 1110(b) of the Act allows us to waive SSI program rules to carry out such demonstrations in the course of conducting projects that are likely to assist in promoting the objectives or facilitate the administration of title XVI of the Act.[4] Participants in demonstrations conducted under section 234 or section 1110(b) must be volunteers who provide informed written consent and are capable of withdrawing their agreement to participate at any time.[5] In addition, SSI demonstrations cannot result in a substantial reduction in any individual's income because he or she participated in a demonstration. These authorities also include additional reporting and scope restrictions. We produce an annual report to Congress on current and recently completed demonstrations [6] and maintain public web pages with demonstration reports.[7] [8]

[1] *https://www.ssa.gov/policy/docs/statcomps/ssi_asr/2019/sect03.html.*

[2] *https://www.ssa.gov/policy/docs/statcomps/ssi_asr/2019/sect04.html#table17.*

[3] Section 234 of the Act, 42 U.S.C. 434. *https://www.ssa.gov/OP_Home/ssact/title02/0234.htm.*

[4] Section 1110(a) and (b) of the Act, 42 U.S.C. 1310(a) and (b). *https://www.ssa.gov/OP_Home/ssact/title11/1110.htm.*

[5] Section 234(e)(1) of the Act, 42 U.S.C. 434(e)(1).

[6] *https://www.ssa.gov/disabilityresearch/documents/Section%20234%20Report%202020.pdf.*

[7] *https://www.ssa.gov/disabilityresearch/demos.htm.*

[8] *https://www.ssa.gov/disabilityresearch/projects.htm.*

Request for Information

Through this notice, we are soliciting suggestions for potential policy changes and services related to supporting DI beneficiaries, SSI recipients, and disability program applicants in their efforts to return to, remaining in, or enter the labor force. We are also soliciting suggestions for other potential demonstrations. Responses to this request may inform our decisions about future demonstrations and how to design such projects. This notice is for our internal planning purposes only and should not be construed as a solicitation or as an obligation on our part or on the part of any participating Federal agencies. For each proposed idea, please be as clear as possible about:

1. The specific policy goal (*e.g.,* increased labor force participation);
2. The target population (*e.g.,* youth, denied applicants, potential applicants, new beneficiaries, older applicants);
3. The specific statute, regulation, or other policy being suggested for change, if any;
4. The proposed service;
5. The specific reason why the policy change or service is expected to achieve the policy goal for the target population (if available, logic models, theories of change, or other aids and evidence supporting the proposed policy change or service should be included);
6. The specific partnerships (*e.g.,* Department of Labor, State Departments of Education, private employers, legal aid agencies), if any, we should consider to implement the demonstration; and
7. Any changes to our demonstration authorities that would be necessary to test the policy change or service.

Guidance for Submitting Documents

We ask that each respondent include the name and address of his or her institution or affiliation, if any, and the name, title, mailing and email addresses, and telephone number of a contact person for his or her institution or affiliation, if applicable.

Rights to Materials Submitted

By submitting material in response to this notice, you agree to grant us a worldwide, royalty-free, perpetual, irrevocable, nonexclusive license to use the material and to post it publicly. Further, you agree that you own, have a valid license, or are otherwise authorized to provide the material to us. In your response to this notice, you should not provide personally identifiable information or any material you consider confidential or proprietary. We will not provide any compensation for material submitted in response to this notice.

The Acting Commissioner of Social Security, Kilolo Kijakazi, having reviewed and approved this document, has delegated the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for purposes of publication in the **Federal Register**.

Faye I. Lipsky,

Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.

[FR Doc. 2021–20158 Filed 9–16–21; 8:45 am]

BILLING CODE 4191–02–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 310 (Sub-No. 3X)]

Utah Railway Company—Discontinuance of Service Exemption—in Carbon and Emery Counties, Utah

On August 30, 2021, Utah Railway Company (UTAH), a Class III rail carrier, filed a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over a railroad line between approximately milepost 0.25 near Helper, Utah, in Carbon County and approximately milepost 25.3 near Mohrland, Utah, in Emery County, a distance of approximately 25.05 miles (the Line). The Line traverses U.S. Postal Service Zip Codes 84526, 84501, 84527, and 84528. The Line includes stations at Martin, at milepost 0.8, and Wildcat, at milepost 6.2.

The petition indicates that the Line is stub-ended and only serves a single freight customer, Wildcat Midstream Limited Partnership (Wildcat Midstream).[1] (Pet. 5.) UTAH has agreed to lease the segment between milepost 0.2 and milepost 9.0 to Wildcat Midstream for Wildcat Midstream's use as a private industrial side track. (*Id.* at 3.) Pursuant to that plan, UTAH will continue to move rail cars for Wildcat Midstream over the leased track and will continue to provide common carrier switching service to the interstate rail network over the connecting track between milepost 0.2 and milepost 0.0. (*Id.*)

UTAH asserts that, because it is seeking discontinuance rather than an abandonment, the question of whether the Line contains any federally granted rights-of-way is inapplicable. (*Id.* at 2.) UTAH also states that any documentation related to title in its possession will be made available to those requesting it. (*Id.*)

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by December 17, 2021.

Because this is a discontinuance proceeding and not an abandonment, interim trail use/rail banking and public use conditions are not appropriate. Because there will be environmental review during any subsequent abandonment, this discontinuance does not require an environmental review. *See* 49 CFR 1105.6(c)(5), 1105.8(b).

Any offer of financial assistance (OFA) for subsidy under 49 CFR 1152.27(b)(2) will be due no later than 120 days after the filing of the petition for exemption, or 10 days after service of a decision granting the petition for exemption, whichever occurs sooner.[2] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer by September 27, 2021, indicating the intent to file an OFA for subsidy and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(1)(i).

All filings in response to this notice must refer to Docket No. AB 310 (Sub-No. 3X) and should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on UTAH's representative, Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Ave. NW, Suite 1300 South, Washington, DC 20004. Replies to the petition are due on or before October 7, 2021.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis at (202) 245–0294. Assistance for the hearing impaired is available

[1] UTAH refers to the shipper as Wildcat Midstream Partners, LLC, but in a support letter attached to the petition the shipper calls itself Wildcat Midstream Limited Partnership. (Pet. 3, Ex. E.)

[2] The filing fee for OFAs can be found at 49 CFR 1002.2(f)(25).

through the Federal Relay Service at (800) 877–8339.

Board decisions and notices are available at *www.stb.gov.*

Decided: September 14, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2021–20222 Filed 9–16–21; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 34495 (Sub-No. 1)]

Buckingham Branch Railroad Company—Acquisition and Operation Exemption with Interchange Commitment—CSX Transportation, Inc.

Buckingham Branch Railroad Company (BBRC), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from CSX Transportation, Inc. (CSXT), and continue to operate approximately 164.22 miles of railroad line, referred to as Segment 3, between approximately milepost 276.0 in Clifton Forge in Allegheny County, Va., and milepost 111.78 at Doswell in Hanover County, Va. (the Line).[1]

The verified notice indicates that BBRC has leased and operated the Line (as part of a longer line between AM Junction, near Richmond, and Clifton Forge) since 2005. According to the verified notice, BBRC and CSXT have agreed to convert BBRC's current leasehold interest in the Line into a permanent, exclusive rail freight operating easement. The verified notice states that BBRC and CSXT will enter into, among other things, a Permanent Easement Agreement and an amended Freight Operating Agreement and will also terminate their existing lease agreement with respect to Segment 3. The verified notice further states that the amended Freight Operating Agreement between BBRC and CSXT contains an interchange commitment that affects interchange with carriers other than CSXT. The affected interchanges are with Norfolk Southern Railway Company at Charlottesville, Va., and at Waynesboro, Va. BBRC has provided additional information regarding the interchange commitment as required by 49 CFR 1150.43(h).

BBRC certifies that its projected annual revenues as a result of this transaction will not result in BBRC's becoming a Class II or Class I rail carrier, but its projected annual revenues will exceed $5 million. Pursuant to 49 CFR 1150.42(e), if a carrier's projected annual revenues will exceed $5 million, it must, at least 60 days before the exemption becomes effective, post a notice of its intent to undertake the proposed transaction at the workplace of the employees on the affected lines, serve a copy of the notice on the national offices of the labor unions with employees on the affected lines, and certify to the Board that it has done so. Concurrently with its verified notice, however, BBRC filed a petition for waiver of the labor notice requirements. BBRC's waiver request will be addressed in a separate decision.

BBRC states that it expects to consummate the transaction on or sometime after the effective date of the exemption. The Board will establish the effective date in its separate decision on the waiver request.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than September 24, 2021.

All pleadings, referring to Docket No. FD 34495 (Sub-No. 1), should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on BBRC's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

According to BBRC, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(1).

Board decisions and notices are available at *www.stb.gov.*

Decided: September 13, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2021–20145 Filed 9–16–21; 8:45 am]

BILLING CODE 4915–01–P

[1] BBRC states that it began operating over the Line in 2004. *See Buckingham Branch R.R.—Lease—CSX Transp.,* FD 34495 (STB served Nov. 5, 2004).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[DOT Docket Number: FAA–2021–0847]

NextGen Advisory Committee; Notice of Public Meeting

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the NextGen Advisory Committee (NAC).

DATES: The meeting will be held virtually, on October 19, 2021, from 1:00 p.m.–4:30 p.m. EDT. Requests to attend the meeting virtually and request for accommodations for a disability must be received by October 5, 2021. If you wish to make a public statement during the meeting, you must submit a written copy of your remarks by October 5, 2021. Written materials requested to be reviewed by NAC Members before the meeting must be received no later than October 5, 2021.

ADDRESSES: This will be a virtual meeting. Virtual meeting information will be provided upon registration. Information on the NAC, including copies of previous meeting minutes, is available on the NAC internet website at *https://www.faa.gov/about/office_org/headquarters_offices/ang/nac/.* Members of the public interested in attending must send the required information listed in the **SUPPLEMENTAL INFORMATION** section to *9-AWA-ANG-NACRegistration@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Greg Schwab, NAC Coordinator, U.S. Department of Transportation, at *gregory.schwab@faa.gov* or 202–267–1201. Any requests or questions not regarding attendance registration should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Transportation established the NAC under agency authority in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, Public Law 92–463, 5 U.S.C. App. 2, to provide independent advice and recommendations to the FAA, and to respond to specific taskings received directly from the FAA. The NAC recommends consensus-driven advice for FAA consideration relating to Air Traffic Management System modernization.

II. Agenda

At the meeting, the agenda will cover the following topics:

- NAC Chairman's Report
- FAA Report
- NAC Subcommittee Chairman's Report
  - Risk and Mitigations update for the following focus areas: Multiple Runway Operations, Data Communications, Performance Based Navigation, Surface and Data Sharing, and Northeast Corridor
- NAC Chairman Closing Comments

The detailed agenda will be posted on the NAC internet website at least one week in advance of the meeting.

III. Public Participation

This virtual meeting will be open to the public. Members of the public who wish to attend are asked to register via email by submitting their full legal name, country of citizenship, contact information (telephone number and email address), and name of your industry association, or applicable affiliation. Please email this information to the email address listed in the **ADDRESSES** section. When registration is confirmed, registrants will be provided the virtual meeting information/teleconference call-in number and passcode. Callers are responsible for paying associated long-distance charges (if any).

Note: Only NAC Members, members of the public who have registered to make a public statement, and NAC working groups and FAA staff who are providing briefings will have the ability to speak. All other attendees will be able to listen only.

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Five minutes will be allotted for oral comments from members of the public joining the meeting. This time may be extended if there is a significant number of members of the public wishing to provide an oral comment. To accommodate as many speakers as possible, the time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, FAA may conduct a lottery to determine the speakers. Speakers are required to submit a copy of their prepared remarks for inclusion in the meeting records and for circulation to NAC members to the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. All prepared remarks submitted on time will be accepted and considered as part of the meeting's record.

Members of the public may submit written statements for inclusion in the meeting records and circulation to the NAC members. Written statements need to be submitted to the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. Comments received after the due date listed in the **DATES** section will be distributed to the members but may not be reviewed prior to the meeting. Any member of the public may present a written statement to the committee at any time.

Signed in Washington, DC, this 14th day of September, 2021.

Tiffany Ottilia McCoy,

General Engineer, NextGen Office of Collaboration and Messaging, ANG–M, Office of the Assistant Administrator for NextGen, Federal Aviation Administration.

[FR Doc. 2021–20103 Filed 9–16–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Drone Advisory Committee (DAC); Notice of Public Meeting

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Drone Advisory Committee.

DATES: The meeting will be held on October 27, 2021, between 12:00 p.m. and 4:00 p.m. Eastern Time.

Requests for reasonable accommodations must be received by October 20, 2021.

Requests to submit written materials to be reviewed during the meeting must be received no later than October 20, 2021.

ADDRESSES: The meeting will be held virtually. Members of the public who wish to observe the virtual meeting can access the livestream from either of the following FAA social media platforms on the day of the event, *https://www.facebook.com/FAA* or *https://www.youtube.com/FAAnews.* For copies of meeting minutes, along with all other information please visit the DAC internet website at *https://www.faa.gov/uas/programs_partnerships/drone_advisory_committee/.*

FOR FURTHER INFORMATION CONTACT: Gary Kolb, UAS Stakeholder & Committee Liaison, Federal Aviation Administration, U.S. Department of Transportation, at *gary.kolb@faa.gov* or 202–267–4441. Any committee related request or request for reasonable accommodations should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The DAC was created under the Federal Advisory Committee Act (FACA), in accordance with Title 5 of the United States Code (5 U.S.C. App. 2) to provide the FAA with advice on key UAS integration issues by helping to identify challenges and prioritize improvements.

II. Agenda

At the meeting, the agenda will cover the following topics:

- Official Statement of the Designated Federal Officer
- Approval of the Agenda and Previous Meeting Minutes
- Opening Remarks
- FAA Update
- Industry-Led Technical Topics
- New Business/Agenda Topics
- Closing Remarks
- Adjourn

Additional details will be posted on the DAC internet website address listed in the **ADDRESSES** section at least seven days in advance of the meeting

III. Public Participation

The meeting will be open to the public and livestreamed. Members of the public who wish to observe the virtual meeting can access the livestream from either of the following FAA social media platforms on the day of the event, *https://www.facebook.com/FAA* or *https://www.youtube.com/FAAnews.* The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

The FAA is not accepting oral presentations at this meeting due to time constraints. Written statements submitted by the deadline will be provided to the DAC members before the meeting. Any member of the public may submit a written statement to the committee at any time.

Issued in Washington, DC, on September 13, 2021

Erik W. Amend,

Manager, Executive Office, AUS–10, Federal Aviation Administration.

[FR Doc. 2021–20058 Filed 9–16–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8881

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 8881, Credit for Small Employer Pension Plan Startup Costs.

DATES: Written comments should be received on or before November 16, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions 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: Credit for Small Employer Pension Plan Startup Costs.

OMB Number: 1545–1810.

Form Number: 8881.

Abstract: Qualified small employers use Form 8881 to claim a credit for start up costs related to eligible retirement plans. Form 8881 implements section 45E, which provides a credit based on costs incurred by an employer in establishing or administering an eligible employer plan or for the retirement-related education of employees with respect to the plan. The credit is 50% of the qualified costs for the tax year, up to a maximum credit of $500 for the first tax year and each of the two subsequent tax years.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 66,667.

Estimated Time per Respondent: 3 hours, 32 minutes.

Estimated Total Annual Burden Hours: 235,335.

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. 2021–20070 Filed 9–16–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 1065, 1066, 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–S,1120–SF,1120–FSC,1120–L,1120–PC,1120–REIT,1120–RIC,1120–POL, and Related Attachments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA). The IRS is soliciting comments on forms used by business entity taxpayers: Forms 1065, 1066, 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–S, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–REIT, 1120–RIC, 1120–POL; and related attachments to these forms (see the Appendix to this notice).

DATES: Written comments should be received on or before November 16, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Paul Adams, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington, at (737)-800–6149, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION: Today, over 90 percent of all business entity tax returns are prepared using software by the taxpayer or with preparer assistance.

These are forms used by business taxpayers. These include Forms *1065, 1066, 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–S, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–REIT, 1120–RIC, 1120–POL,* and related schedules, that business entity taxpayers attach to their tax returns (see Appendix A for this notice). In addition, there are numerous OMB numbers that report burden already included in this OMB number. In order to eliminate this duplicative burden reporting, 163 OMB numbers are being obsoleted. See Appendix B for information on the obsoleted OMB numbers and the burden that was

previously reported under those numbers.

Tax Compliance Burden

Tax compliance burden is defined as the time and money taxpayers spend to comply with their tax filing responsibilities. Time-related activities include recordkeeping, tax planning, gathering tax materials, learning about the law and what you need to do, and completing and submitting the return. Out-of-pocket costs include expenses such as purchasing tax software, paying a third-party preparer, and printing and postage. Tax compliance burden does not include a taxpayer's tax liability, economic inefficiencies caused by sub-optimal choices related to tax deductions or credits, or psychological costs.

Proposed PRA Submission to OMB

Title: U.S. Business Income Tax Return.

OMB Number: 1545–0123.

Form Numbers: Forms 1065, 1066, 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–S, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–REIT, 1120–RIC, 1120–POL and all attachments to these forms (see the Appendix to this notice).

Abstract: These forms are used by businesses to report their income tax liability.

Current Actions: There have been changes in regulatory guidance related to various forms approved under this approval package during the past year. There has been additions and removals of forms included in this approval package. It is anticipated that these changes will have an impact on the overall burden and cost estimates requested for this approval package, however these estimates were not finalized at the time of release of this notice. These estimated figures are expected to be available by the release of the 30-comment notice from Treasury. This approval package is being submitted for renewal purposes only.

Type of Review: Revision of currently approved collections.

Affected Public: Corporations and Pass-Through Entities.

Estimated Number of Respondents: 12,200,000.

Total Estimated Time: 1,121,779,661 hours.

Estimated Time per Respondent: 92 hours (91.95).

Total Estimated Out-of-Pocket Costs: $45,779,983,051.

Estimated Out-of-Pocket Cost per Respondent: $10,685.

Total Monetized Burden: 130,361,000,000.

Estimated Total Monetized Burden per Respondent: $10,685.

Note: Amounts below are for estimates for FY 2022. Reported time and cost burdens are national averages and do not necessarily reflect a ''typical case. Most taxpayers experience lower than average burden, with taxpayer burden varying considerably by taxpayer type. Detail may not add due to rounding.

FISCAL YEAR 2021 ICB ESTIMATES FOR FORM 1120 AND 1065 SERIES OF RETURNS AND FORMS AND SCHEDULES

	FY 22		FY 21
Number of Taxpayers	12,200,000	400,000	11,800,000
Burden in Hours	1,121,800,000	36,800,000,	1,085,000,000
Burden in Dollars	45,780,000,000	1,501,000,000	44,279,000,000
Monetized Total Burden	130,361,000,000	34,558,000,000	95,803.000,000

Tables 1, 2, and 3 below show the burden model estimates for each of the three classifications of business taxpayers: Partnerships (Table 1), corporations (Table 2) and S corporations (Table 3). As the tables show, the average filing compliance is different for the three forms of business. Showing a combined average burden for all businesses would understate the burden for corporations and overstate the burden for the two pass-through entities (partnerships and corporations). In addition, the burden for small and large businesses is shown separately for each type of business entity in order to clearly convey the substantially higher burden faced by the largest businesses.

TABLE 1—TAXPAYER BURDEN FOR ENTITIES TAXED AS PARTNERSHIPS

[Forms 1065, 1066, and all attachments]

Primary form filed or type of taxpayer	Number of returns (millions)	Average time per taxpayer (hours)	Average cost per taxpayer	Average monetized burden
All Partnerships	4.5	290	$5,900	$17,800
Small	4.2	270	4,400	13,200
Other *	0.3	610	29,000	89,300

* ''Other'' is defined as one having end-of-year assets greater than $10 million. A large business is defined the same way for partnerships, taxable corporations, and pass-through corporations. A small business is any business that does not meet the definition of a large business.

TABLE 2—TAXPAYER BURDEN FOR ENTITIES TAXED AS TAXABLE CORPORATIONS

[Forms 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–POL, and all attachments]

Primary form filed or type of taxpayer	Number of returns (millions)	Average time per taxpayer (hours)	Average cost per taxpayer	Average monetized burden
All Taxable Corporations	2.3	335	$7,700	$23,500
Small	2.2	280	4,000	13,500

TABLE 2—TAXPAYER BURDEN FOR ENTITIES TAXED AS TAXABLE CORPORATIONS—Continued

[Forms 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–POL, and all attachments]

Primary form filed or type of taxpayer	Number of returns (millions)	Average time per taxpayer (hours)	Average cost per taxpayer	Average monetized burden
Large *	0.1	1,255	70,200	194,800

* A ''large'' business is defined as one having end-of-year assets greater than $10 million. A ''large'' business is defined the same way for partnerships, taxable corporations, and pass-through corporations. A small business is any business that does not meet the definition of a large business.

TABLE 3—TAXPAYER BURDEN FOR ENTITIES TAXED AS PASS-THROUGH CORPORATIONS

[Forms 1120–REIT, 1120–RIC, 1120–S, and all attachments]

Primary form filed or type of taxpayer	Number of returns (millions)	Average time per taxpayer (hours)	Average cost per taxpayer	Average monetized burden
All Pass-Through Corporations	5.4	245	$3,500	$11,300
Small	5.3	240	3,100	10,200
Large *	0.1	610	30,900	91,500

* A ''large'' business is defined as one having end-of-year assets greater than $10 million. A ''large'' business is defined the same way for partnerships, taxable corporations, and pass-through corporations. A small business is any business that does not meet the definition of a large business.

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 14, 2021.

Sara L Covington,

IRS Tax Analyst.

Appendix A

Product	Title
Form 1042	Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.
Form 1042 (SCH Q)	Schedule Q (Form 1042).
Form 1042–S	Foreign Person's U.S. Source Income Subject to Withholding.
Form 1042–T	Annual Summary and Transmittal of Forms 1042–S.
Form 1065	U.S. Return of Partnership Income.
Form 1065 (SCH B–1)	Information for Partners Owning 50% or More of the Partnership.
Form 1065 (SCH B–2)	Election Out of the Centralized Partnership Audit Regime.
Form 1065 (SCH C)	Additional Information for Schedule M–3 Filers.
Form 1065 (SCH D)	Capital Gains and Losses.
Form 1065 (SCH K–1)	Partner's Share of Income, Deductions, Credits, etc.
Form 1065 (SCH K–2)	Partner's Distributive Share Items-International.
Form 1065 (SCH K–3)	Partner's Share of Income, Deductions, Credits, etc—International.
Form 1065 (SCH M–3)	Net Income (Loss) Reconciliation for Certain Partnerships.
Form 1065X	Amended Return or Administrative Adjustment Request (AAR).
Form 1066	U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return.
Form 1066 (SCH Q)	Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation.
Form 1118	Foreign Tax Credit—Corporations.
Form 1118 (SCH I)	Reduction of Foreign Oil and Gas Taxes.
Form 1118 (SCH J)	Adjustments to Separate Limitation Income (Loss) Categories for Determining Numerators of Limitation Fractions, Year-End Recharacterization Balances, and Overall Foreign and Domestic Loss Account Balances.
Form 1118 (SCH K)	Foreign Tax Carryover Reconciliation Schedule.
Form 1120	U.S. Corporation Income Tax Return.
Form 1120 (SCH B)	Additional Information for Schedule M–3 Filers.
Form 1120 (SCH D)	Capital Gains and Losses.
Form 1120 (SCH G)	Information on Certain Persons Owning the Corporation's Voting Stock.
Form 1120 (SCH H)	Section 280H Limitations for a Personal Service Corporation (PSC).
Form 1120 (SCH M–3)	Net Income (Loss) Reconciliation for Corporations With Total Assets of $10 Million of More.

Product	Title
Form 1120 (SCH N)	Foreign Operations of U.S. Corporations.
Form 1120 (SCH O)	Consent Plan and Apportionment Schedule for a Controlled Group.
Form 1120 (SCH PH)	U.S. Personal Holding Company (PHC) Tax.
Form 1120 (SCH UTP)	Uncertain Tax Position Statement.
Form 1120–C	U.S. Income Tax Return for Cooperative Associations.
Form 1120–F	U.S. Income Tax Return of a Foreign Corporation.
Form 1120–F (SCH H)	Deductions Allocated to Effectively Connected Income Under Regulations Section 1.861–8.
Form 1120–F (SCH I)	Interest Expense Allocation Under Regulations Section 1.882–5.
Form 1120–F (SCH M1 & M2)	Reconciliation of Income (Loss) and Analysis of Unappropriated Retained Earnings per Books.
Form 1120–F (SCH M–3)	Net Income (Loss) Reconciliation for Foreign Corporations With Reportable Assets of $10 Million or More.
Form 1120–F (SCH P)	List of Foreign Partner Interests in Partnerships.
Form 1120–F (SCH Q)	Tax Liability of Qualified Derivatives Dealer (QDD).
Form 1120–F (SCH S)	Exclusion of Income From the International Operation of Ships or Aircraft Under Section 883.
Form 1120–F (SCH V)	List of Vessels or Aircraft, Operators, and Owners.
Form 1120–FSC	U.S. Income Tax Return of a Foreign Sales Corporation.
Form 1120–FSC (SCH P)	Transfer Price or Commission.
Form 1120–H	U.S. Income Tax Return for Homeowners Associations.
Form 1120–IC–DISC	Interest Charge Domestic International Sales Corporation Return.
Form 1120–IC–DISC (SCH K)	Shareholder's Statement of IC–DISC Distributions.
Form 1120–IC–DISC (SCH P)	Intercompany Transfer Price or Commission.
Form 1120–IC–DISC (SCH Q)	Borrower's Certificate of Compliance With the Rules for Producer's Loans.
Form 1120–L	U.S. Life Insurance Company Income Tax Return.
Form 1120–L (SCH M–3)	Net Income (Loss) Reconciliation for U.S. Life Insurance Companies With Total Assets of $10 Million or More.
Form 1120–ND *	Return for Nuclear Decommissioning Funds and Certain Related Persons.
Form 1120–PC	U.S. Property and Casualty Insurance Company Income Tax Return.
Form 1120–PC (SCH M–3)	Net Income (Loss) Reconciliation for U.S. Property and Casualty Insurance Companies With Total Assets of $10 Million or More.
Form 1120–POL	U.S. Income Tax Return for Certain Political Organizations.
Form 1120–REIT	U.S. Income Tax Return for Real Estate Investment Trusts.
Form 1120–RIC	U.S. Income Tax Return for Regulated Investment Companies.
Form 1120–S	U.S. Income Tax Return for an S Corporation.
Form 1120–S (SCH B–1)	Information on Certain Shareholders of an S Corporation.
Form 1120–S (SCH D)	Capital Gains and Losses and Built-In Gains.
Form 1120–S (SCH K–1)	Shareholder's Share of Income, Deductions, Credits, etc.
Form 1120–S (SCH K–2)	Shareholder's Pro Rata Share Items—International.
Form 1120–S (SCH M–3)	Net Income (Loss) Reconciliation for S Corporations With Total Assets of $10 Million or More.
Form 1120–SF	U.S. Income Tax Return for Settlement Funds (Under Section 468B).
Form 1120–W	Estimated Tax for Corporations.
Form 1120–X	Amended U.S. Corporation Income Tax Return.
Form 1122	Authorization and Consent of Subsidiary Corporation to be Included in a Consolidated Income Tax Return.
Form 1125–A	Cost of Goods Sold.
Form 1125–E	Compensation of Officers.
Form 1127	Application for Extension of Time for Payment of Tax Due to Undue Hardship.
Form 1128	Application to Adopt, Change, or Retain a Tax Year.
Form 1138	Extension of Time For Payment of Taxes By a Corporation Expecting a Net Operating Loss Carryback.
Form 1139	Corporation Application for Tentative Refund.
Form 2220	Underpayment of Estimated Tax By Corporations.
Form 2438	Undistributed Capital Gains Tax Return.
Form 2439	Notice to Shareholder of Undistributed Long-Term Capital Gains.
Form 2553	Election by a Small Business Corporation.
Form 2848	Power of Attorney and Declaration of Representative.
Form 3115	Application for Change in Accounting Method.
Form 3468	Investment Credit.
Form 3520	Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.
Form 3520–A	Annual Return of Foreign Trust With a U.S. Owner.
Form 3800	General Business Credit.
Form 4136	Credit for Federal Tax Paid on Fuels.
Form 4255	Recapture of Investment Credit.
Form 4466	Corporation Application for Quick Refund of Overpayment of Estimated Tax.
Form 4562	Depreciation and Amortization (Including Information on Listed Property).
Form 4684	Casualties and Thefts.
Form 4797	Sales of Business Property.
Form 4810	Request for Prompt Assessment Under Internal Revenue Code Section 6501(d).
Form 4876–A	Election to Be Treated as an Interest Charge DISC.
Form 5452	Corporate Report of Nondividend Distributions.
Form 5471	Information Return of U.S. Persons With Respect To Certain Foreign Corporations.
Form 5471 (SCH E)	Income, War Profits, and Excess Profits Taxes Paid or Accrued.
Form 5471 (SCH H)	Current Earnings and Profits.
Form 5471 (SCH I–1)	Information for Global Intangible Low-Taxed Income.
Form 5471 (SCH J)	Accumulated Earnings and Profits (E&P) of Controlled Foreign Corporation.
Form 5471 (SCH M)	Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons.
Form 5471 (SCH O)	Organization or Reorganization of Foreign Corporation, and Acquisitions and Dispositions of its Stock.
Form 5471 (SCH P)	Previously Taxed Earnings and Profits of U.S. Shareholder of Certain Foreign Corporations.

Product	Title
Form 5471 (SCH Q)	CFC Income by CFC Income Groups.
Form 5471 (SCH R)	Distributions From a Foreign Corporation.
Form 5472	Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.
Form 56 *	Notice Concerning Fiduciary Relationship.
Form 56–F *	Notice Concerning Fiduciary Relationship of Financial Institution.
Form 5713 *	International Boycott Report.
Form 5713 (SCH A) *	International Boycott Factor (Section 999(c)(1)).
Form 5713 (SCH B) *	Specifically, Attributable Taxes and Income (Section 999(c)(2)).
Form 5713 (SCH C) *	Tax Effect of the International Boycott Provisions.
Form 5735 *	American Samoa Economic Development Credit.
Form 5735 Schedule P *	Allocation of Income and Expenses Under Section 936(h)(5).
Form 5884 *	Work Opportunity Credit.
Form 5884–A *	Credits for Affected Midwestern Disaster Area Employers (for Employers Affected by Hurricane Harvey, Irma, or Maria or Certain California Wildfires).
Form 6198 *	At-Risk Limitations.
Form 6478 *	Biofuel Producer Credit.
Form 6627 *	Environmental Taxes.
Form 6765 *	Credit for Increasing Research Activities.
Form 6781 *	Gains and Losses From Section 1256 Contracts and Straddles.
Form 7004 *	Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns.
Form 8023	Elections Under Section 338 for Corporations Making Qualified Stock Purchases.
Form 8050	Direct Deposit Corporate Tax Refund.
Form 8082 *	Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).
Form 8275 *	Disclosure Statement.
Form 8275–R *	Regulation Disclosure Statement.
Form 8288 *	U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests.
Form 8288–A *	Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests.
Form 8288–B *	Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests.
Form 8300 *	Report of Cash Payments Over $10,000 Received In a Trade or Business.
Form 8302 *	Electronic Deposit of Tax Refund of $1 Million or More.
Form 8308	Report of a Sale or Exchange of Certain Partnership Interests.
Form 8329 *	Lender's Information Return for Mortgage Credit Certificates (MCCs).
Form 8404	Interest Charge on DISC-Related Deferred Tax Liability.
Form 8453–C	U.S. Corporation Income Tax Declaration for an IRS e-file Return.
Form 8453–I	Foreign Corporation Income Tax Declaration for an IRS e-file Return.
Form 8453–PE	U.S. Partnership Declaration for an IRS e-file Return.
Form 8453–S	U.S. S Corporation Income Tax Declaration for an IRS e-file Return.
Form 851	Affiliations Schedule.
Form 8586 *	Low-Income Housing Credit.
Form 8594 *	Asset Acquisition Statement Under Section 1060.
Form 8609 *	Low-Income Housing Credit Allocation and Certification.
Form 8609–A *	Annual Statement for Low-Income Housing Credit.
Form 8611 *	Recapture of Low-Income Housing Credit.
Form 8621 *	Information Return By Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
Form 8621–A *	Return by a Shareholder Making Certain Late Elections to End Treatment as a Passive Foreign Investment Company.
Form 8655 *	Reporting Agent Authorization.
Form 8697 *	Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.
Form 8703 *	Annual Certification of a Residential Rental Project.
Form 8716	Election To Have a Tax Year Other Than a Required Tax Year.
Form 8752	Required Payment or Refund Under Section 7519.
Form 8804	Annual Return for Partnership Withholding Tax (Section 1446).
Form 8804 (SCH A)	Penalty for Underpayment of Estimated Section 1446 Tax for Partnerships.
Form 8804–C	Certificate of Partner-Level Items to Reduce Section 1446 Withholding.
Form 8804–W	Installment Payments of Section 1446 Tax for Partnerships.
Form 8805	Foreign Partner's Information Statement of Section 1446 Withholding tax.
Form 8806	Information Return for Acquisition of Control or Substantial Change in Capital Structure.
Form 8810	Corporate Passive Activity Loss and Credit Limitations.
Form 8813 *	Partnership Withholding Tax Payment Voucher (Section 1446).
Form 8816	Special Loss Discount Account and Special Estimated Tax Payments for Insurance Companies.
Form 8819	Dollar Election Under Section 985.
Form 8820 *	Orphan Drug Credit.
Form 8822–B	Change of Address—Business
Form 8824 *	Like-Kind Exchanges.
Form 8825	Rental Real Estate Income and Expenses of a Partnership or an S Corporation.
Form 8826 *	Disabled Access Credit.
Form 8827	Credit for Prior Year Minimum Tax—Corporations.
Form 8830 *	Enhanced Oil Recovery Credit.
Form 8832 *	Entity Classification Election.
Form 8833 *	Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).
Form 8834 *	Qualified Electric Vehicle Credit.
Form 8835 *	Renewable Electricity, Refined Coal, and Indian Coal Production Credit.

Product	Title
Form 8838 *	Consent to Extend the Time To Assess Tax Under Section 367—Gain Recognition Agreement.
Form 8838–P *	Consent To Extend the Time To Assess Tax Pursuant to the Gain Deferral Method (Section 721(c)).
Form 8842	Election to Use Different Annualization Periods for Corporate Estimated Tax.
Form 8844 *	Empowerment Zone Employment Credit.
Form 8845	Indian Employment Credit.
Form 8846	Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.
Form 8848 *	Consent to Extend the Time to Assess the Branch Profits Tax Under Regulations Sections 1.884–2(a) and (c).
Form 8858 *	Information Return of U.S. Persons With Respect to Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs).
Form 8858 (SCH M) *	Transactions Between Foreign Disregarded Entity (FDE) or Foreign Branch (FB) and the Filer or Other Related Entities.
Form 8864 *	Biodiesel and Renewable Diesel Fuels Credit.
Form 8865	Return of U.S. Persons With Respect to Certain Foreign Partnerships.
Form 8865 (SCH G)	Statement of Application for the Gain Deferral Method Under Section 721(c).
Form 8865 (SCH H)	Acceleration Events and Exceptions Reporting Relating to Gain Deferral Method Under Section 721(c).
Form 8865 (SCH K–1)	Partner's Share of Income, Deductions, Credits, etc.
Form 8865 (SCH K–2)	Partner's Distributive Share Items—International.
Form 8865 (SCH K–3)	Partner's Share of Income, Deductions, Credits, etc.—International.
Form 8865 (SCH O)	Transfer of Property to a Foreign Partnership.
Form 8865 (SCH P)	Acquisitions, Dispositions, and Changes of Interests in a Foreign Partnership.
Form 8866	Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.
Form 8869	Qualified Subchapter S Subsidiary Election.
Form 8873 *	Extraterritorial Income Exclusion.
Form 8874 *	New Markets Credit.
Form 8875	Taxable REIT Subsidiary Election.
Form 8878–A *	IRS e-file Electronic Funds Withdrawal Authorization for Form 7004.
Form 8879–C	IRS e-file Signature Authorization for Form 1120.
Form 8879–I	IRS e-file Signature Authorization for Form 1120–F.
Form 8879–PE	IRS e-file Signature Authorization for Form 1065.
Form 8879–S	IRS e-file Signature Authorization for Form 1120S.
Form 8881 *	Credit for Small Employer Pension Plan Startup Costs.
Form 8882 *	Credit for Employer-Provided Childcare Facilities and Services.
Form 8883	Asset Allocation Statement Under Section 338.
Form 8886 *	Reportable Transaction Disclosure Statement.
Form 8896 *	Low Sulfur Diesel Fuel Production Credit.
Form 8900 *	Qualified Railroad Track Maintenance Credit.
Form 8902	Alternative Tax on Qualified Shipping Activities.
Form 8903 *	Domestic Production Activities Deduction.
Form 8906 *	Distilled Spirits Credit.
Form 8908 *	Energy Efficient Home Credit.
Form 8910 *	Alternative Motor Vehicle Credit.
Form 8911	Alternative Fuel Vehicle Refueling Property Credit.
Form 8912 *	Credit to Holders of Tax Credit Bonds.
Form 8916	Reconciliation of Schedule M–3 Taxable Income with Tax Return Taxable Income for Mixed Groups.
Form 8916–A	Supplemental Attachment to Schedule M–3.
Form 8918 *	Material Advisor Disclosure Statement.
Form 8923	Mining Rescue Team Training Credit.
Form 8925 *	Report of Employer-Owned Life Insurance Contracts.
Form 8927	Determination Under Section 860(e)(4) by a Qualified Investment Entity.
Form 8932	Credit for Employer Differential Wage Payments.
Form 8933	Carbon Oxide Sequestration Credit.
Form 8936 *	Qualified Plug-In Electric Drive Motor Vehicle Credit.
Form 8937	Report of Organizational Actions Affecting Basis of Securities.
Form 8938 *	Statement of Foreign Financial Assets.
Form 8941 *	Credit for Small Employer Health Insurance Premiums.
Form 8947	Report of Branded Prescription Drug Information.
Form 8966 *	FATCA Report.
Form 8966–C	Cover Sheet for Form 8966 Paper Submissions.
Form 8979	Partnership Representative Revocation/Resignation and Designation.
Form 8990	Limitation on Business Interest Expense IRC 163(j).
Form 8991	Tax on Base Erosion Payments of Taxpayers with Substantial Gross Receipts.
Form 8992	U.S Shareholder Calculation of Global Intangible Low-Taxed Income (GILTI).
Form 8992–Sch–B	Calculation of Global Intangible Low-Taxed Income (GILTI) for Members of a U.S. Consolidated Group Who Are U.S. Shareholders of a CFC.
Form 8993	Section 250 Deduction for Foreign-Derived Intangible Income (FDII)and Global Intangible Low-Taxed Income (GILTI).
Form 8994 *	Employer Credit for Paid Family and Medical Leave.
Form 8995 *	Qualified Business Income Deduction Simplified Computation.
Form 8995–A *	Qualified Business Income Deduction.
Form 8995–A (SCH A) *	Specified Service Trades or Businesses.
Form 8995–A (SCH B) *	Aggregation of Business Operations.
Form 8995–A (SCH C) *	Loss Netting And Carryforward.

Product	Title
Form 8995–A (SCH D) *	Special Rules for Patrons Of Agricultural Or Horticultural Cooperatives.
Form 8996	Qualified Opportunity Fund.
Form 926	Return by a U.S. Transferor of Property to a Foreign Corporation.
Form 965	Inclusion of Deferred Foreign Income Upon Transition to Participation Exemption System.
Form 965 (SCH–D) LP	U.S. Shareholder's Aggregate Foreign Cash Position.
Form 965 (SCH–F)	Foreign Taxes Deemed Paid by Domestic Corporation (for U.S. Shareholder Tax).
Form 965 (SCH–H)	Disallowance of Foreign Tax Credit and Amounts Reported on Forms 1116 and 1118.
Form 965–B	Corporate and Real Estate Investment Trust (REIT) Report of Net 965 Tax Liability and Electing REIT Report of 965 Amounts.
Form 965–C	Transfer Agreement Under Section 965(h)(3).
Form 965–D	Transfer Agreement Under 965(i)(2).
Form 965–E	Consent Agreement Under 965(i)(4)(D).
Form 966	Corporate Dissolution or Liquidation.
Form 970 *	Application to Use LIFO Inventory Method.
Form 972 *	Consent of Shareholder to Include Specific Amount in Gross Income.
Form 973	Corporation Claim for Deduction for Consent Dividends.
Form 976	Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust.
Form 982 *	Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment).
Form SS–4 *	Application for Employer Identification Number.
Form SS–4(PR) *	Solicitud de Número de Identificación Patronal (EIN).
Form T (TIMBER) *	Forest Activities Schedule.
Form W–8BEN *	Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (Individuals).
Form W–8BEN(E) *	Certificate of Entities Status of Beneficial Owner for United States Tax Withholding (Entities).
Form W–8ECI *	Certificate of Foreign Person's Claim That Income is Effectively Connected With the Conduct of a Trade or Business in the United States.
Form W–8IMY *	Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting.

Appendix B

OMB numbers that will no longer be separately reported in order to eliminate duplicate burden reporting. For business filers, the following OMB numbers are or will be retired resulting in a total reduction of 48,912,072 reported burden hours.

Burden hours	OMB No.	Title
1,005	1545–0731	Definition of an S Corporation.
41	1545–0746	LR–100–78 (Final) Creditability of Foreign Taxes.
205	1545–0755	Related Group Election With Respect to Qualified Investments in Foreign Base Company Shipping Operations.
37,922,688	*1545–0771	TD 8864 (Final); EE–63–88 (Final and temp regulations) Taxation of Fringe Benefits and Exclusions From Gross Income for Certain Fringe Benefits; IA–140–86 (Temporary) Fringe Benefits Treas reg 1.274.
3,104	1545–0807	(TD 7533) Final, DISC Rules on Procedure and Administration; Rules on Export Trade Corporations, and (TD 7896) Final, Income from Trade Shows.
8,125	1545–0879	TD 8426—Certain Returned Magazines, Paperbacks or Records (IA–195–78).
978	1545–1018	FI–27–89 (Temporary and Final) Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters; FI–61–91 (Final) Allocation of Allocable Investment.
1,025	1545–1041	TD 8316 Cooperative Housing Corporations.
50,417	1545–1068	T.D. 8618—Definition of a Controlled Foreign Corporation, Foreign Base Company Income, and Foreign Personal Holding Company Income of a Controlled Foreign Corporation (INTL–362–88).
12,694	1545–1070	Effectively connected income and the branch profits tax.
3,250	1545–1072	INTL–952–86 (Final-TD 8410) and TD 8228 Allocation and Apportionment of Interest Expense and Certain Other Expenses.
1,620	*1545–1083	Treatment of Dual Consolidated Losses.
40	1545–1093	Final Minimum Tax-Tax Benefit Rule (TD 8416).
4,008	1545–1102	PS–19–92 (TD 9420—Final) Carryover Allocations and Other Rules Relating to the Low-Income Housing Credit.
19,830	*1545–1130	Special Loss Discount Account and Special Estimated Tax Payments for Insurance Companies.
1,500	1545–1138	TD–8350 (Final) Requirements For Investments to Qualify under Section 936(d)(4) as Investments in Qualified Caribbean Basin Countries.
70	*1545–1146	Applicable Conventions Under the Accelerated Cost.
640,000	1545–1191	Information with Respect to Certain Foreign-Owned Corporations—IRC Section 6038A.
662	1545–1218	CO–25–96 (TD 8824—Final) Regulations Under Section 1502 of the Internal Revenue Code of 1986; Limitations on Net Operating Loss Carryforwards and Certain Built-in Losses and Credits Following.
1,000	1545–1224	T.D. 8337 (Final) Allocation and Apportionment of Deduction for State Income Taxes (INTL–112–88).
1,000	*1545–1233	Adjusted Current Earnings (IA–14–91) (Final).
2,000	*1545–1237	REG–209831–96 (TD 8823) Consolidated Returns—Limitation on the Use of Certain Losses and Deductions.
49,950	*1545–1251	TD 8437—Limitations on Percentage Depletion in the Case of Oil and Gas Wells.
50	1545–1254	TD 8396—Conclusive Presumption of Worthlessness of Debts Held by Banks (FI–34–91).

Burden hours	OMB No.	Title
1	*1545–1260	CO–62–89 (Final) Final Regulations under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards.
2,390	1545–1271	Treatment of transfers of stock or securities to foreign corporations.
200	1545–1275	Limitations on net operating loss carryforwards and certain built-in losses following ownership change.
2,070	1545–1287	FI–3–91 (TD 8456—Final) Capitalization of Certain Policy Acquisition Expenses.
625	1545–1290	TD 8513—Bad Debt Reserves of Banks.
3,542	1545–1299	TD 8459—Settlement Funds.
2,200	1545–1300	Treatment of Acquisition of Certain Financial Institutions: Certain Tax Consequences of Federal Financial Assistance to Financial Institutions.
322	1545–1308	TD 8449 (Final) Election, Revocation, Termination, and Tax Effect of Subchapter S Status.
63	1545–1324	CO–88–90 (TD 8530) Limitation on Net Operating Loss Carryforwards and Certain Built-in Losses Following Ownership Change; Special Rule for Value of a Loss Corporation Under the Jurisdiction.
5	1545–1338	Election Out of Subchapter K for Producers of Natural Gas—TD 8578.
18,600	*1545–1344	TD 8560 (CO–30–92) Consolidated Returns—Stock Basis and Excess Loss Accounts, Earnings and Profits, Absorption of Deductions and Losses, Joining and Leaving Consolidated Groups, Worthless (Final).
2,000	1545–1352	TD 8586 (Final) Treatment of Gain From Disposition of Certain Natural Resource Recapture Property.
104,899	1545–1357	PS–78–91 (TD 8521) (TD 8859) Procedures for Monitoring Compliance with Low-Income Housing Credit Requirements; PS–50–92 Rules to Carry Out the Purposes of Section 42 and for Correcting.
9,350	1545–1364	Methods to Determine Taxable Income in connection with a Cost Sharing Arrangement—IRC Section 482.
20,000	1545–1412	FI–54–93 (Final) Clear Reflection of Income in the Case of Hedging Transactions.
4,332	*1545–1417	Form 8845—Indian Employment Credit.
1,050	1545–1433	Consolidated and Controlled Groups-Intercompany Transactions and Related Rules.
875	1545–1434	CO–26–96 (Final) Regulations Under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and With Respect to Controlled Groups.
333	1545–1438	TD 8643 (Final) Distributions of Stock and Stock Rights.
10,000	1545–1440	TD 8611, Conduit Arrangements Regulations—Final (INTL–64–93).
2,000	*1545–1447	CO–46–94 (TD 8594—Final) Losses on Small Business Stock.
1,250	1545–1476	Source of Income From Sales of Inventory and Natural Resources Produced in One Jurisdiction and Sold in Another Jurisdiction.
171,050	1545–1480	TD 8985—Hedging Transactions.
2,500	1545–1491	TD 8746—Amortizable Bond Premium.
1,000	1545–1493	TD 8684—Treatment of Gain From the Disposition of Interest in Certain Natural Resource Recapture Property by S Corporations and Their Shareholders.
212,500	1545–1507	(TD 8701)—Treatment of Shareholders of Certain Passive Investment Companies; (TD 8178)—Passive Foreign Investment Companies.
326,436	*1545–1522	Revenue Procedure 2017–52, 2017–1, 2017–3 Rulings and determination letters.
10,467	1545–1530	Rev. Proc. 2007–32—Tip Rate Determination Agreement (Gaming Industry); Gaming Industry Tip Compliance Agreement Program.
10,000	*1545–1539	REG–208172–91 (TD 8787—final) Basis Reduction Due to Discharge of Indebtedness.
18,553	*1545–1541	Revenue Procedure 97–27, Changes in Methods of Accounting.
278,622	*1545–1546	Revenue Procedure 97–33, EFTPS (Electronic Federal Tax Payment System).
50,000	*1545–1548	Rev. Proc. 2013–30, Uniform Late S Corporation Election Revenue Procedure.
296,896	1545–1549	Tip Reporting Alternative Commitment (TRAC) Agreement and Tip Rate Determination (TRDA) for Use in the Food and Beverage Industry.
30,580	1545–1551	Changes in Methods of Accounting (RP 2016–29).
623	1545–1555	REG–115795–97 (Final) General Rules for Making and Maintaining Qualified Electing Fund Elections.
500	1545–1556	TD 8786—Source of Income From Sales of Inventory Partly From Sources Within a Possession of the U.S.; Also, Source of Income Derived From Certain Purchases From a Corp. Electing Sec. 936.
1,000	1545–1558	Rev. Proc. 98–46 (modifies Rev. Proc. 97–43)—Procedures for Electing Out of Exemptions Under Section 1.475(c)–1; and Rev. Rul. 97–39, Mark-to-Market Accounting Method for Dealers in Securities.
100,000	1545–1559	Revenue Procedures 98–46 and 97–44, LIFO Conformity Requirement.
2,000	1545–1566	Notice 2010–46, Prevention of Over-Withholding of U.S. Tax Avoidance With Respect to Certain Substitute Dividend Payments.
904,000	1545–1588	Adjustments Following Sales of Partnership Interests.
10,110	*1545–1590	REG–251698–96 (T.D. 8869—Final) Subchapter S Subsidiaries.
500	*1545–1617	REG–124069–02 (Final) Section 6038—Returns Required with Respect to Controlled Foreign Partnerships; REG–118966–97 (Final) Information Reporting with Respect to Certain Foreign Partnership.
3,000	1545–1634	TD 9595 (REG–141399–07) Consolidated Overall Foreign Losses, Separate Limitation Losses, and Overall Domestic Losses.
500	1545–1641	Rev. Proc. 99–17—Mark to Market Election for Commodities Dealers and Securities and Commodities Traders.
50	1545–1642	TD 8853 (Final), Recharacterizing Financing Arrangements Involving Fast-Pay Stock.
1	1545–1646	TD 8851—Return Requirement for United States Persons Acquiring or Disposing of an Interest in a Foreign Partnership, or Whose Proportional Interest in a Foreign Partnership Changes.
75	*1545–1647	Revenue Procedure 2001–21 Debt Roll-Ups.
1,620	*1545–1657	Revenue Procedure 99–32—Conforming Adjustments Subsequent to Section 482 Allocations.
25	1545–1658	Purchase Price Allocations in Deemed Actual Asset Acquisitions.
10,000	1545–1661	Qualified lessee construction allowances for short-term leases.
1,500	1545–1671	REG–209709–94 (Final—TD 8865) Amortization of Intangible Property.
70	1545–1672	T.D. 9047—Certain Transfers of Property to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs).

Burden hours	OMB No.	Title
470	1545–1675	Treatment of taxable income of a residual interest holder in excess of daily accruals.
23,900	1545–1677	Exclusions From Gross Income of Foreign Corporations.
13,134	1545–1684	Pre-Filing Agreements Program.
400	*1545–1690	Notice 2000–28, Coal Exports.
400	1545–1699	TD 9715; Rev. Proc. 2015–26 (Formerly TD 9002; Rev Proc 2002–43), Agent for Consolidated Group.
3,200	1545–1701	Revenue Procedure 2000–37—Reverse Like-kind Exchanges (as modified by Rev Proc. 2004–51).
2,000	1545–1706	TD 9315—Section 1503(d) Closing Agreement Requests.
1,800	1545–1711	TD 9273—Stock Transfer Rules: Carryover of Earnings and Taxes (REG–116050–99).
4,877	1545–1714	Tip Reporting Alternative Commitment (TRAC) for most industries.
870	1545–1716	Employer-Designed Tip Reporting Program for the Food and Beverage Industry (EmTRAC)—Notice 2001–1.
1,897	1545–1717	Tip Rate Determination Agreement (TRDA) for Most Industries.
1,250	1545–1718	Source of Income from Certain Space and Ocean Activities; Source of Communications Income (TD 9305—final).
15	1545–1730	Manner of making election to terminate tax-exempt bond financing.
19	1545–1731	Extraterritorial Income Exclusion Elections.
1,318	1545–1736	Advanced Insurance Commissions—Revenue Procedure 2001–24.
500	1545–1748	Changes in Accounting Periods—REG–106917–99 (TD 8669/Final).
5,950	1545–1752	Revenue Procedure 2008–38, Revenue Procedure 2008–39, Revenue Procedure 2008–40, Revenue Procedure 2008–41, Revenue Procedure 2008–42.
100,000	1545–1756	Revenue Procedure 2001–56, Demonstration Automobile Use.
530,090	1545–1765	T.D. 9171, New Markets Tax Credit.
500	1545–1768	Revenue Procedure 2003–84, Optional Election to Make Monthly Sec. 706 Allocations.
7,700	1545–1774	Extensions of Time to Elect Method for Determining Allowable Loss.
100	1545–1784	Rev Proc 2002–32 as Modified by Rev Proc 2006–21, Waiver of 60-month Bar on Reconsolidation after Disaffiliation.
600	1545–1786	Changes in Periods of Accounting.
300	1545–1799	Notice 2002–69, Interest Rates and Appropriate Foreign Loss Payment Patterns For Determining the Qualified Insurance Income of Certain Controlled Corporations under Section 954(f).
7,500	*1545–1801	Revenue Procedure 2002–67, Settlement of Section 351 Contingent Liability Tax Shelter Cases.
300	1545–1820	Revenue Procedure 2003–33, Section 9100 Relief for 338 Elections.
15,000	*1545–1828	TD 9048; 9254—Guidance under Section 1502; Suspension of Losses on Certain Stock Disposition (REG–131478–02).
100	1545–1831	TD 9157 (Final) Guidance Regarding the Treatment of Certain Contingent Payment Debt Instruments w/one or more Payments that are Denominated in, or Determined by Reference to, a Nonfunctional Currency.
625	*1545–1833	Revenue Procedure 2003–37, Documentation Provisions for Certain Taxpayers Using the Fair Market Value Method of Interest Expense Apportionment.
8,600	1545–1834	Revenue Procedure 2003–39, Section 1031 LKE (Like-Kind Exchanges) Auto Leasing Programs.
2,000	*1545–1837	Revenue Procedure 2003–36, Industry Issue Resolution Program.
3,200	1545–1847	Revenue Procedure 2004–29—Statistical Sampling in Sec. 274 Context.
24,000	*1545–1855	TD 9285—Limitation on Use of the Nonaccrual-Experience Method of Accounting Under Section 448(d)(5).
50	1545–1861	Revenue Procedure 2004–19—Probable or Prospective Reserves Safe Harbor.
3,000	1545–1870	TD 9107—Guidance Regarding Deduction and Capitalization of Expenditures.
1,500	1545–1893	Rollover of Gain from Qualified Small Business Stock to Another Qualified Small Business Stock.
3,000	1545–1905	TD 9289 (Final) Treatment of Disregarded Entities Under Section 752.
200	1545–1906	TD 9210—LIFO Recapture Under Section 1363(d).
76,190	1545–1915	Notice 2005–4, Fuel Tax Guidance, as modified.
552,100	1545–1939	Notification Requirement for Transfer of Partnership Interest in Electing Investment Partnership (EIP).
52,182	1545–1945	26 U.S. Code § 475—Mark to market accounting method for dealers in securities.
2,765	1545–1946	T.D. 9315 (Final) Dual Consolidated Loss Regulations.
250	1545–1965	TD 9360 (REG–133446–03) (Final) Guidance on Passive Foreign Company (PFIC) Purging Elections.
1,985	*1545–1983	Qualified Railroad Track Maintenance Credit.
3,034,765	*1545–1986	Notice 2006–47, Elections Created or Effected by the American Jobs Creation Act of 2004.
12	*1545–1990	Application of Section 338 to Insurance Companies.
150	*1545–2001	Rev. Proc. 2006–16, Renewal Community Depreciation Provisions.
1,700	*1545–2002	Notice 2006–25 (superseded by Notice 2007–53), Qualifying Gasification Project Program.
4,950	1545–2003	Notice 2006–24, Qualifying Advanced Coal Project Program.
3,761	1545–2004	Deduction for Energy Efficient Commercial Buildings.
171,160	*1545–2008	Nonconventional Source Fuel Credit.
25	*1545–2014	TD 9452—Application of Separate Limitations to Dividends from Noncontrolled Section 902 Corporations.
500	1545–2017	Notice 2006–46 Announcement of Rules to be included in Final Regulations under Section 897(d) and (e) of the Internal Revenue Code.
375,000	1545–2019	TD 9451—Guidance Necessary to Facilitate Business Election Filing; Finalization of Controlled Group Qualification Rules (TD 9329).
200	1545–2028	Fuel Cell Motor Vehicle Credit.
35	1545–2030	REG–120509–06 (TD 9465—Final), Determination of Interest Expense Deduction of Foreign Corporations.
100	1545–2036	Taxation and Reporting of REIT Excess Inclusion Income by REITs, RICs, and Other Pass-Through Entities (Notice 2006–97).
2,400	1545–2072	Revenue Procedure 2007–35—Statistical Sampling for Purposes of Section 199.
2,500	1545–2091	TD 9512 (Final)—Nuclear Decommissioning Funds.

Burden hours	OMB No.	Title
25	1545–2096	Loss on Subsidiary Stock—REG–157711–02 (TD 9424—Final).
120	1545–2103	Election to Expense Certain Refineries.
3,000	1545–2110	REG–127770–07 (Final), Modifications of Commercial Mortgage Loans Held by a Real Estate Mortgage Investment Conduit.
26,000	1545–2114	S Corporation Guidance under AJCA of 2004 (TD 9422 Final—REG–143326–05).
389,330	*1545–2122	Form 8931—Agricultural Chemicals Security Credit.
1,000	1545–2125	REG–143544–04 Regulations Enabling Elections for Certain Transaction Under Section 336(e).
2,700	*1545–2133	Rev. Proc. 2009–16, Section 168(k)(4) Election Procedures and Rev. Proc. 2009–33, Section 168(k)(4) Extension Property Elections.
350	*1545–2134	Notice 2009–41—Credit for Residential Energy Efficient Property.
100	1545–2145	Notice 2009–52, Election of Investment Tax Credit in Lieu of Production Tax Credit; Coordination with Department of Treasury Grants for Specified Energy Property in Lieu of Tax Credits.
300,000	1545–2147	Internal Revenue Code Section 108(i) Election.
4,500	1545–2149	Treatment of Services Under Section 482; Allocation of Income and Deductions From Intangibles; Stewardship Expense (TD 9456).
250	1545–2150	Notice 2009–58, Manufacturers' Certification of Specified Plug-in Electric Vehicles.
550,000	1545–2151	Qualifying Advanced Energy Project Credit—Notice 2013–12.
180	1545–2153	Notice 2009–83—Credit for Carbon Dioxide Sequestration Under Section 45Q.
1,000	*1545–2155	TD 9469 (REG–102822–08) Section 108 Reduction of Tax Attributes for S Corporations.
36,000	1545–2156	Revenue Procedure 2010–13, Disclosure of Activities Grouped under Section 469.
1,500	1545–2158	Notice 2010–54: Production Tax Credit for Refined Coal.
5,988	1545–2165	Notice of Medical Necessity Criteria under the Mental Health Parity and Addiction Equity Act of 2008.
3,260	1545–2183	Transfers by Domestic Corporations That Are Subject to Section 367(a)(5); Distributions by Domestic Corporations That Are Subject to Section 1248(f). (TD 9614 & 9615).
694,750	1545–2186	TD 9504, Basis Reporting by Securities Brokers and Basis Determination for Stock; TD 9616, TD 9713, and TD 9750.
1,000	1545–2194	Rules for Certain Rental Real Estate Activities.
1,800	1545–2209	REG–112805–10—Branded Prescription Drugs.
403,177	1545–2242	REG–135491–10—Updating of Employer Identification Numbers.
200	1545–2245	REG–160873–04—American Jobs Creation Act Modifications to Section 6708, Failure to Maintain List of Advisees With Respect to Reportable Transactions.
75,000	1545–2247	TD 9633—Limitations on Duplication of Net Built-in Losses.
400	1545–2259	Performance & Quality for Small Wind Energy Property.
1,800	1545–2276	Safe Harbor for Inadvertent Normalization Violations.
Total: 48,912,072.		

*Discontinued in FY20.

[FR Doc. 2021–20123 Filed 9–16–21; 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 Branded Prescription Drug Fee.

DATES: Written comments should be received on or before November 16, 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 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: Branded Prescription Drug Fee.

Regulation Project Number: 1545–2209.

Abstract: This document contains regulations that provide guidance on the annual fee imposed on covered entities engaged in the business of manufacturing or importing branded prescription drugs.

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: 45.

Estimated Average Time per Respondent: 40 hours.

Estimated Total Annual Burden Hours: 1,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection 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. 2021–20069 Filed 9–16–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 1099–G, Certain Government Payments.

DATES: Written comments should be received on or before November 16, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, at (202) 317–6009, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Certain Government Payments.

OMB Number: 1545–0120.

Form Number: 1099–G.

Abstract: Form 1099–G is used to report government payments such as unemployment compensation, state and local income tax refunds, credits, or offsets, reemployment trade adjustment assistance (RTAA) payments, taxable grants, agricultural payments, or for payments received on a Commodity Credit Corporation (CCC) loan.

Current Actions: There are no changes made to the form, this submission is for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Federal, state, local or tribal governments.

Estimated Number of Responses: 82,364,600.

Estimated Time per Response: .3 hours.

Estimated Total Annual Burden Hours: 24,709,380.

The following paragraph applies to 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. 2021–20068 Filed 9–16–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for TD 8352 and TD 8531

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning TD 8352 (temp & final) Final Regulations Under Sections 382 and 383 of the Internal Revenue Code of 1986; Pre-change Attributes; TD 8531—Final Regulations Under Section 382.

DATES: Written comments should be received on or before November 16, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, (202) 317–6009, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: TD 8352 (temp & final) Final Regulations Under Sections 382 and 383 of the Internal Revenue Code of 1986; Pre-change Attributes; TD 8531—Final Regulations Under Section 382.

OMB Number: 1545–1120.

Abstract: (TD 8352) These regulations require reporting by a corporation after it undergoes an ''ownership change'' under Code sections 382 and 383. Corporations required to report under these regulations include those with capital loss carryovers and excess credits. (TD 8531) These regulations provide rules for the treatment of options under Code section 382 for purposes of determining whether a corporation undergoes an ownership change. The regulation allows for certain elections for corporations whose stock is subject to options.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a current OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 75,150.

Estimated Time per Response: 2 hours, 56 minutes.

Estimated Total Annual Burden Hours: 220,575.

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. 2021–20073 Filed 9–16–21; 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, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning guidance necessary to facilitate business electronic filing under section 1561, guidance necessary to facilitate business electronic filing and reduction, guidance necessary to facilitate business election filing, finalization of controlled group qualification rules and limitations on the importation of net built-in losses.

DATES: Written comments should be received on or before November 16, 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, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: T.D. 9304—Guidance Necessary to Facilitate Business Electronic Filing Under Section 1561, T.D. 9329—Guidance Necessary to Facilitate Business Electronic Filing and Burden Reduction, T.D. 9451—Guidance Necessary to Facilitate Business Election Filing; Finalization of Controlled Group Qualification Rules and T.D. 9759—Limitations on the Importation of Net Built-In Losses.

OMB Number: 1545–2019.

Regulation Project Numbers: TD 9304(REG–161919–05), TD 9329(REG134317–05), TD 9451(REG–161919–05) and TD 9759(REG–161948–05).

Abstract: TD 9304 regulations provide guidance to taxpayers regarding how to allocate the amounts of tax benefit items under section 1561(a) amongst the component members of a controlled group of corporations which have an apportionment plan in effect. TD 9329 contains final regulations that simplify, clarify, or eliminate reporting burdens and also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. TD 9451 provides guidance to taxpayers for determining which corporations are included in a controlled group of corporations. TD 9759 provides guidance for preventing the importation of loss when a corporation that is subject to U.S. income tax acquires loss property tax-free in certain transactions and the loss in the acquired property accrued outside the U.S. tax system by requiring the bases of the assets received to be equal to value.

Current Actions: There are no changes to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 225,000.

Estimated Time per Respondent: 1 hr., 40 minutes.

Estimated Total Annual Burden Hours: 375,000.

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. 2021–20067 Filed 9–16–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nominations for Appointment to the Research Advisory Committee on Gulf War Veterans' Illnesses

AGENCY: Department of Veterans Affairs.

ACTION: Notice of nominations for appointment to the Research Advisory Committee on Gulf War Veterans' Illnesses.

SUMMARY: The Department of Veterans Affairs (VA) is seeking nominations of qualified candidates to be considered for appointment to the Research Advisory Committee on Gulf War Veterans' Illnesses (RACGWVI) (hereinafter in this section referred to as ''the Committee'').

DATES: Nominations for membership on the Committee must be received no later than 5:00 p.m. EST on November 15, 2021.

ADDRESSES: All nominations should be emailed to *varacgwvi@va.gov.* Please write Nomination for RACGWVI Membership in the subject line.

FOR FURTHER INFORMATION CONTACT: Dr. Karen Block, Designated Federal Officer, Gulf War Research Program, VA Office of Research and Development, 202–443–5791 or at *Karen.Block@va.gov.* A copy of the Committee charter and list of the current membership can also be obtained by contacting Dr. Block.

SUPPLEMENTARY INFORMATION: The Research Advisory Committee on Gulf War Veterans' Illnesses was established to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, plans and strategies related to understanding and treating the health consequences of military service in the Southwest Asia theater of operations during the 1990–91 Gulf War (Operations Desert Shield and Desert Storm).

Membership Criteria and Qualifications: VHA is requesting nominations for upcoming vacancies on the Committee. The Committee is comprised of approximately 12 members. Several members may be regular Government employees, but the majority of the Committee's membership shall consist of non-Federal employees, appointed by the Secretary from the general public, serving as Special Government employees.

The expertise required of Committee membership includes, but is not limited to:

a. Gulf War Veterans;

b. Representatives of such Veterans; and

c. Members of the medical and scientific communities representing appropriate disciplines such as, but not limited to, epidemiology, immunology, environmental health, neurology and toxicology.

Membership Requirements: The Committee meets at least once and up to three times annually. Individuals selected for appointment to the Committee shall be invited to serve a two to three-year term. The Secretary may reappoint Committee members for an additional term of service. Committee members will receive per diem and reimbursement for eligible travel expenses incurred. Self-nominations and nominations of non-Veterans will be accepted. Any letters of nomination from organizations or other individuals should accompany the package when it is submitted.

To the extent possible, the Secretary seeks members who have diverse professional and personal qualifications including but not limited to subject matter experts in the areas described above. We ask that nominations include any relevant experience information so that VA can ensure diverse Committee membership.

Requirements for Nomination Submission: Nominations must be typed (12-point font) and include:

(1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.,* specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating that he/she is a U.S. citizen and is willing to serve as a member of the Committee;

(2) The nominee's contact information, including name, mailing address, telephone numbers, and email address;

(3) The nominee's resume or curriculum vitae that is no more than three pages in length. The resume should show professional work experience, and Veterans service involvement, especially service that involves Gulf War Veterans' issues; and

(4) A one-page cover letter. The cover letter must summarize:

a. The nominee's interest in serving on the committee and contributions she/he can make to the work of the committee;

b. any relevant Veterans service activities she/he is currently engaged in;

c. the military branch affiliations and timeframe of military service (if applicable);

d. information about the nominee's personal and professional qualifications and background that would give her/him a diverse perspective on Gulf War Veterans' matters; and

e. a statement confirming that she/he is not a Federally registered lobbyist.

The Department makes every effort to ensure that the membership of VA Federal advisory committees are diverse in terms of points of view represented and the committee's capabilities. Appointments to this Committee shall be made without discrimination because of a person's race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, or genetic information. Nominations must state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership.

The Committee is authorized by Public Law 105–368 § 104, and operates under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Dated: September 13, 2021.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2021–20077 Filed 9–16–21; 8:45 am]

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 229 and 697

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations; Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 229 and 697

[Docket No. FR–210827–0171]

RIN 0648–BJ09

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations; Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery

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

ACTION: Final rule.

SUMMARY: NMFS is amending the regulations implementing the Atlantic Large Whale Take Reduction Plan to reduce the incidental mortality and serious injury to North Atlantic right whales (*Eubalaena glacialis*), fin whales (*Balaenoptera physalus*), and humpback whales (*Megaptera novaeangliae*) in northeast commercial lobster and Jonah crab trap/pot fisheries to meet the goals of the Marine Mammal Protection Act and the Endangered Species Act. In addition, this action also makes a small revision to Federal regulations implemented under the Atlantic State Marine Fisheries Commission's Interstate Fishery Management Plan for American Lobster to increase the maximum length of a lobster trap trawl groundline. This action is necessary to reduce the risks to North Atlantic right whales and other large whales associated with the presence of fishing gear in waters used by these animals.

DATES: This rule is effective October 18, 2021. Compliance for 50 CFR 229.32(b)(2)(i), (b)(3), (c)(2)(i) through (iv), and (c)(8) and (9) is not required until May 1, 2022 (see **SUPPLEMENTARY INFORMATION** for more details).

ADDRESSES: Copies of the Final Environmental Impacts Statement (FEIS) including the Record of Decision, Regulatory Impact Review (RIR), and Regulatory Flexibility Analysis (RFA) as well as supporting documents are accessible via the internet on the Atlantic Large Whale Take Reduction Plan website at: *Fisheries.NOAA.gov/ALWTRP* or you may request copies by email from Marisa Trego: *Marisa.Trego@noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule should be sent within 30 days of publication of this rule to *www.reginfo.gov/public/do/PRAMain* or by email to Ainsley Smith at *Ainsley.Smith@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Marisa Trego, Marine Mammal Take Reduction Team Coordinator, phone: (978) 282–8484 or email: *Marisa.Trego@noaa.gov*

SUPPLEMENTARY INFORMATION:

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Background

This final rule implements modifications to the Atlantic Large Whale Take Reduction Plan (ALWTRP or Plan) as informed by the Atlantic Large Whale Take Reduction Team (ALWTRT or Team) and contained in the proposed rule, as modified based upon public input, including modifications deemed necessary by NMFS to meet the goals of the Marine Mammal Protection Act (MMPA) and Endangered Species Act (ESA). The final rule includes a one-month delay in effectiveness to allow fishermen time to move gear away from seasonal restricted areas. Compliance with gear configuration modifications described below including those changes that require fishermen to modify gear marking, change gear configurations to increase traps fished on trawls, or modify buoy lines to accommodate new weak rope and weak insertions is not required until May 1, 2022. Delayed compliance will provide fishermen with the time necessary to purchase materials and reconfigure their gear while conducting other regular gear maintenance activities.

The ALWTRP was originally developed pursuant to section 118 of the MMPA (16 U.S.C. 1387) to reduce mortality and serious injury of three stocks of large whales (fin, humpback, and North Atlantic right) incidental to Category I and II fisheries. Under the MMPA, a strategic stock of marine mammals is defined as a stock: (1) For which the level of direct human-caused mortality exceeds the Potential Biological Removal (PBR) level; (2) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the ESA of 1973 within the foreseeable future; or (3) which is listed as a threatened or endangered species under the ESA or is designated as depleted under the MMPA (16 U.S.C. 1362(19)). When incidental mortality or serious injury of marine mammals from commercial fishing exceeds a stock's PBR level, the MMPA directs NMFS to convene a take reduction team made up of stakeholders including representatives of Federal agencies, each coastal state which has fisheries which interact with the species or stock, appropriate Regional Fishery Management Councils, interstate fisheries commissions, academic and scientific organizations, environmental groups, all commercial and recreational fisheries groups and gear types which incidentally take the species or stock, and if relevant, Alaska Native organizations or Indian tribal organizations. [1]

The ALWTRT was established in 1996 and has 60 members, including about 22 trap/pot and gillnet fishermen or fishery representatives. The background for the take reduction planning process and initial development of the Plan is provided in the preambles to the proposed (62 FR 16519, April 7, 1997), interim final (62 FR 39157, July 22, 1997), and final (64 FR 7529, February 16, 1999) rules implementing the initial plan. The Team met and recommended modifications to the Plan, implemented by NMFS through rulemaking, several times since 1997 in an ongoing effort to meet the MMPA take reduction goals. Despite modifications to the Plan (notably the use of sinking groundlines effective in 2009 (72 FR 57104) and efforts to reduce the number of vertical buoy lines and an expansion of the Massachusetts Restricted Area (MRA) effective in 2015 (79 FR 36586, 79 FR 73848, and 80 FR 30367)), mortalities and serious injuries of right whales in U.S. gear and first seen in U.S. waters at levels above PBR have continued.

NMFS informed the Team in late 2017 that it was necessary to reconvene to develop recommendations to reduce the impacts of U.S. commercial fisheries on

[1] There are no Alaska Native or Indian tribal organizations participating in fisheries managed under the Atlantic Large Whale Take Reduction Team.

large whales with a focus on reducing risk to the declining North Atlantic right whale population (Pace *et al.* 2017). Seventeen right whale mortalities were observed in 2017, including many determined to have been caused by vessel strikes and entanglements, leading to a declaration of a right whale Unusual Mortality Event. An annual average of five entanglement-related mortalities and serious injuries were documented from 2009 through 2018. Most could not be identified to a country of origin; only 0.2 per year could be attributed with certainty to U.S. fisheries, only 0.7 per year to Canadian fisheries, and an average of four per year could not be attributed to either country. For the purposes of creating a risk reduction target, NMFS assigned half of the unknown entanglement incidents to U.S. fisheries. Under this assumption, based on documented mortality and serious entanglement incidents, a 60-percent reduction would be needed to reduce right whale mortality and serious injury in U.S. commercial fisheries from an annual average PBR of 2.2 to below the current PBR of 0.8 per year. However, documented mortalities and serious injuries represent a minimum count and unobserved mortalities and serious injuries are not considered in the 60-percent target risk reduction. An upper bound target of 80 percent considered estimated mortalities generated by the Pace *et al.* 2017 population model that estimates unobserved mortality (Hayes *et al.* 2019). Currently, there is no way to definitively apportion unseen but estimated mortality across causes (fishery interaction vs. vessel strike) or country of origin (*United States* vs. *Canada*). For the purposes of developing a conservative target to meet the MMPA goals, in 2019 NMFS assumed that half of the estimated undocumented incidents occurred in U.S. waters and were caused primarily by incidental entanglements. However, given the assumptions and other sources of uncertainty in the 80-percent target, as well as the challenges achieving such a target, the Team focused on developing recommendations to achieve the lower 60-percent target.

Greater detail on right whale population estimates, the stock's decline, changes in distribution and reproductive rates, and entanglement-related mortalities and serious injuries documented in recent years can be found in the preamble to the proposed rule (85 FR 86878 December 31, 2020), and are briefly summarized in Chapter 2 of the FEIS.

During a Team meeting in April 2019, the Team recommended a framework of measures to modify lobster and Jonah crab trap/pot trawls within the Northeast Region Trap/Pot Management Area (Northeast Region) intended to reduce risk of mortality and serious injury to right whales incidentally entangled in buoy line in those fisheries by at least 60 percent. The Team's near-consensus recommendations included jurisdictionally specific combinations of line reduction measures to reduce right whale encounters with buoy lines and weak rope requirements to increase the chance of right whales parting the rope (self-releasing) to reduce mortalities and serious injuries when entanglements do occur. As described in more detail in the preamble to the proposed rule and in Chapter 3 of the FEIS, the Team's recommendations were not fully crafted as regulatory elements, and the proposed rule and draft environmental impact statement (DEIS) included modifications to the Team's recommendations based on public scoping and input from New England states related to implementation and operational feasibility. The proposed rule analyzed in the DEIS included less line reduction and weak rope than the Team recommended, and included additional measures to reduce right whale co-occurrence through new or expanded seasonal restricted areas. Although the Team did not make recommendations on the existing weak link requirement at the buoy line or on the proposed change to transition seasonal restricted areas to be closures to fishing with buoy lines rather than closures to fishing altogether, those measures were also proposed and analyzed. Finally, gear marking recommendations were discussed by the Team and received general support, but specific gear marking requirements were never taken to a vote for consensus, and gear marking requirements were not included in the Team's recommendations. Comments on the proposed rule and DEIS as well as new information regarding right whales were considered in the development of this final rule.

The public's vast input into this regulatory effort demonstrates stakeholder interest in conserving and recovering the North Atlantic right whale while also ensuring the development of operationally feasible and economical risk reduction measures. Benefits of large whale protection are difficult to describe in monetary value, but include non-consumer use benefits, non-use benefits, and potential costs savings from current disentanglements efforts. Economic research has demonstrated that society places economic value on environmental assets, whether or not those assets are ever directly exploited. The large number of commenters shows that society places real (and potentially measurable) economic value on simply knowing that large whale populations are flourishing in their natural environment (often referred to as ''existence value'') and will be preserved for the enjoyment of future generations. Collateral benefits to other species are also incurred through buoy line reductions that benefit other endangered species of large whales and endangered sea turtles, and weaker rope that would benefit other large whales.

Protection to large whales under the take reduction process, however, cannot be done without an economic impact. The annual cost of compliance for this rulemaking is $9.8–19.2 million, representing 1.5 to 3 percent of the 2019 landings value of the fisheries. However, given the input of fishermen and fishery managers, operationally feasible measures were developed that, relative to the other alternative analyzed, achieve the purposes of this rulemaking with nearly the same risk reduction but a much lesser economic impact on regulated entities than the analyzed non-preferred Alternative.

Changes to the Atlantic Large Whale Take Reduction Plan

This rule modifies the Plan in 50 CFR part 229, specifically the Northeast Region (Maine through Rhode Island) American lobster and Jonah crab trap/pot fishery. Described in more detail below, this rule: Increases the minimum number of traps per trawl based on area fished and distance fished from shore in the Northeast Region; modifies existing restricted areas from seasonal fishing closures to seasonal closures to fishing with persistent buoy lines; expands the geographic extent of the Massachusetts Restricted Area to include Massachusetts state waters north to the New Hampshire border; establishes two new restricted areas that are seasonally closed to fishing for lobster or Jonah crab with persistent buoy lines; requires modified buoy lines to incorporate rope engineered to break at no more than 1,700 pounds (lb) (771.1 kilograms (kg)) or weak insertion configurations that break at no more than 1,700 lb (771.1 kg); and requires additional marks on buoy lines to differentiate vertical buoy lines by principal port state, includes unique marks for Federal waters, and expands requirements into areas previously exempt from gear marking.

Changes to the Plan To Reduce the Number of Vertical Buoy Lines

The rule increases the minimum number of traps between buoy lines, known as trawling up, to reduce the number of buoy lines. The trawl configurations are established by area fished and distance fished from shore in the Northeast Region (waters offshore of Maine (ME), New Hampshire (NH), Massachusetts (MA), and Rhode Island (RI)) as detailed in Table 1. The rule describes the areas established in Maine regulations and known as Maine Lobster Management Zones (Zones) (ME DMR 13–188 Chapter 25.94). As a conservation equivalency measure for vessels fishing in Zones, this rule allows fishermen to choose to either trawl up to the minimum established traps/trawl or fish a trawl with half the minimum number of traps with a buoy line on only one end.

TABLE 1—LINE REDUCTION MEASURES

Area	Traps/trawl
ME 3 nm (5.56 km)–6 nm*, Zone A West	8 traps/trawl per two buoy lines or 4 traps/trawl per one buoy line.
ME 3 nm (5.56 km)–6 nm*, Zone B	5 traps/trawl per one buoy line.
ME 3 nm (5.56 km)–6 nm*, Zones C, D, E, F, G	10 traps/trawl per two buoy lines or 5 traps/trawl per one buoy line.
ME 3 nm (5.56 km)–12 nm (22.22 km), Zone A East	20 traps/trawl per two buoy lines or 10 traps/trawl per one buoy line.
ME 6*–12 nm, Zone A West	15 traps/trawl per two buoy lines or 8 traps/trawl per one buoy line.
ME 6*–12 nm, Zone B, D, E, F	10 traps/trawl per two buoy lines or 5 traps/trawl per one buoy line (status quo in D, E, & F).
ME 6*–12 nm, Zone C, G	20 traps/trawl per two buoy lines or 10 traps/trawl per one buoy line.
MA Lobster Management Area (LMA) 1, 6*–12 nm	15 traps/trawl.
LMA 1 & Outer Cape Cod (OCC) 3–12 nm (5.56–22.22 km)	15 traps/trawl.
LMA 1 over 12 nm (22.22 km)	25 traps/trawl.
LMA3, North of 50 fathom line on the south end of Georges Bank	45 traps/trawl, increase maximum trawl length from 1.5 nm (2.78 km) to 1.75 nm (3.24 km).
LMA3, South of 50 fathom line on the south end of Georges Bank	35 traps/trawl, increase maximum trawl length from 1.5 nm (2.78 km) to 1.75 nm (3.24 km).
LMA3, Georges Basin Restricted Area	50 traps/trawl, increase maximum trawl length from 1.5 nm (2.78 km) to 1.75 nm (3.24 km).

* ME 6 is a line offshore of Maine that is approximately 6 nm (11.1 km) from the coast.

Changes to the Plan Related to Seasonal Restricted Areas

The rule modifies closures in two restricted areas, the Massachusetts Restricted Area and the Great South Channel Restricted Area, by implementing closures to buoy lines rather than closures to the harvest of lobster or Jonah crab by the trap-pot fishery. The change would not include the Outer Cape Cod (OCC) Lobster Management Area (LMA), which remains closed to the lobster and Jonah crab trap/pot fishery under Massachusetts and Federal regulations (32 Mass. Reg 6.02 paragraph(7)(a) and 50 CFR 697.7(c)(1)(xxx)) implementing the Atlantic State Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan for American Lobster. This modification allows fishermen with authorization to be exempt from surface marking requirements (buoys, radar reflectors, and high flyers) to fish these areas if they fish without the use of persistent buoy lines by remotely retrieving traps from the bottom using an acoustic signal, or through other means that do not require a persistent buoy line. This measure is intended to accelerate research and development of buoyless fishing methods, commonly termed ''ropeless'' fishing, so that in the future, commercial fishing using ropeless technology can be used in place of seasonal closures to allow trap/pot fishing while protecting right whales.

NMFS has invested a substantial amount of funding in developing ropeless fishing gear. We anticipate that these efforts to facilitate and support the industry's development of ropeless gear will continue, pending appropriations. Given the high cost of ropeless retrieval technology, for the foreseeable future, industry participants are likely to depend on loans of gear purchased by the Northeast Fisheries Science Center for ropeless research collaborations. By 2025, we anticipate this would allow up to 33 fishermen to fish with up to 10 trawls each in the Northeast Region, including the restricted areas. Because they would be fishing under Federal exempted fishing permits (EFP) or equivalent state authorization, conditions to minimize impacts on the natural and human environment will likely include some area restrictions, reporting and monitoring requirements, gear marking of any stored buoy line, and evidence of communication and collaboration with adjacent fixed and mobile gear fishermen to minimize gear conflicts.

This rule also extends the area of the Massachusetts Restricted Area north to the New Hampshire border for state waters, mirroring the Massachusetts 2021 modification of the state water closure (322 CMR 12.04(2)). This final rule does not adopt the Massachusetts seasonal extension through May 15, but instead retains the February through April seasonal closure.

This rule also establishes two new restricted areas that would be seasonally closed to fishing for lobster and Jonah crab with persistent buoy lines. The LMA 1 Restricted Area would be closed to buoy lines from October through January. The South Island Restricted Area would be closed to buoy lines from February through April. Figure 1 shows existing (dark gray) and new (light gray) seasonal restricted areas.

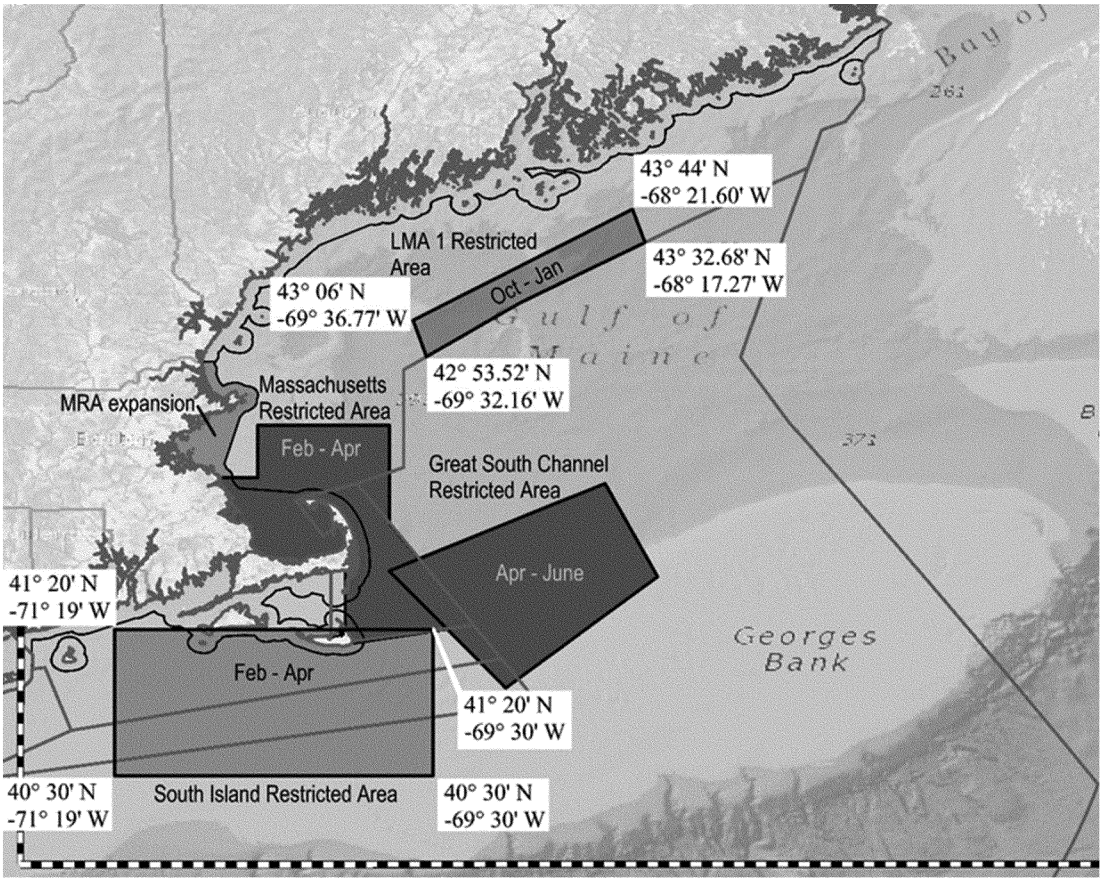

Figure 1. New (light gray) and existing (dark gray) seasonal restricted areas.

Changes to the Plan To Establish Weak Rope Requirements

This rule removes the requirement for a weak link at the buoy in the Northeast Region commercial lobster and Jonah crab trap/pot fisheries. As described in Table 2, all buoy lines in these fisheries will have weak rope or weak insertions well below the surface system. There is little information available to determine the efficacy of weak links at the buoy in reducing entanglement severity. Models suggest that when a whale encounters rope in the water column, the rope parts below the encounter (Knowlton *et al.* 2020). Retention of the buoy may have some benefits: Buoys have identifying marks that could improve our understanding of set locations of retrieved gear or may provide resistance and pull gear away from a whale, improving the chances of shedding gear.

Depending on the area fished and distance from shore, this rule requires all buoy lines in the fisheries to use engineered weak rope or weak inserts as described in Table 2. Under most operational conditions, weak rope or a weak insertion within the top half of a buoy line would not be subject to forces approaching or greater than 1,700 lb (771.1 kg) during hauls. Weak insertion placement locations were developed and proposed by Maine Department of Marine Resources (DMR), with much input from Maine fishermen who identified measures that could work with their existing gear, even with the longer trawl lengths being implemented. These measures reduce economic impacts and concerns that longer trawl lengths would result in strong and more dangerous buoy ropes.

TABLE 2—WEAK ROPE MEASURES

Area	Weak rope or weak insertions
Northeast Region	For all buoy lines incorporating weak line or weak insertions, remove weak link requirement at surface system.
ME state waters outside of exemption line	1 weak insertion 50 percent down the line.
MA State Waters	Fully weak line or weak inserts every 60 ft (18.3 m) in top 75 percent of line.
NH state waters	1 weak insertion 50 percent down the line.
RI wtate waters	Fully weak line or weak inserts every 60 ft (18.3 m) in top 75 percent of line.
ME Zone A west, B, C, D, E; Federal waters 3–12 nm (5.56–22.22 km).	2 weak insertions, at 25 percent and 50 percent down line.
ME Zone A east, F, and G; Federal waters 3–12 nm (5.56–22.22 km).	1 weak insertion 33 percent down the line.
MA and NH LMA 1 , OCC; Federal waters 3–12 nm (5.56–22.22 km).	2 weak insertions, at 25 percent and 50 percent down line.

TABLE 2—WEAK ROPE MEASURES—Continued

Area	Weak rope or weak insertions
LMA 1 & OCC over 12 nm (22.22 km)	1 weak insertion 33 percent down the line.
LMA 2	Fully weak line or weak inserts every 60 ft (18.3 m) in top 75 percent of line.
LMA 3	One buoy line weak to 75 percent.

A number of approved weak insertions are detailed in this regulation. To be approved, these weak inserts were demonstrated to break at 1,700 lb (771.1 kg) or less through 10 trials with a calibrated rope breaking machine, they are considered replicable, and are large enough and created with a contrasting color so they can be detected for enforcement purposes.

This rule also includes a provision for the Greater Atlantic Regional Administrator to approve in writing new weak insertions that are demonstrated to break at 1,700 lb (771.1 kg) or less and to include information about approved weak insertions on the ALWTRP website. The current regulations indicate that the NMFS Assistant Administrator would approve new weak insertions, as well as weak link and gear marking modifications. In actual practice, the NMFS Greater Atlantic Regional Administrator makes that determination, therefore these edits are made for accuracy. A definition for the Regional Administrator was added to the definitions list in 50 CFR part 229.

Changes to the Plan for Gear Marking Requirements

This rule modifies gear marking requirements by establishing a state-specific color for Maine (purple), New Hampshire (yellow), Massachusetts (red), and Rhode Island (silver/gray) vessels, except those fishing in LMA 3 which retains black as the primary gear mark color. For ropeless fishing operations working under EFPs or state authorizations, gear marking is likely to be recommended as a permit condition for any stored buoy line that is retrieved remotely, and a yellow/black striped mark is anticipated. All vessels in the Northeast Region are required to include a large 3-foot (0.9-meter (m)) solid mark within the surface system using paint or tape, and additional 1-foot (0.3-m) green marks (no marking convention defined; tape, paint, twine, etc.) within 6 inches (15.24 centimeters (cm)) of each area-specific gear mark to distinguish state from Federal waters or, in the case of LMA 3 vessels, to distinguish Northeast Region vessels from vessels fishing in the southern and western LMA 3 waters. For dual permitted vessels that fish in both state and Federal waters, the green gear mark can be created with a twine or other marking system that can be applied or removed during transit between state and Federal water fishing locations, or with paint, if applicable state regulations permit Federal marks to remain on buoy lines fished in state waters by dual permitted vessels. Gear marks are all required to be 1-foot long or greater when installed to distinguish them from Canadian marks, which currently are required to be at least 6 inches (15.24 cm) in length. The term ''state'' refers to the state associated with the vessel's principal port as declared on state and Federal permits. A principal port is considered the city and state where the majority of landings occur. Although more than 90 percent of lobster and Jonah crab Federal permit holders identify the same state as their principal port, mailing address, and home port (city and state where a vessel is moored), the port of landing was selected based on recommendations from some state managers, and is considered to be the area where fishing occurs.

TABLE 3—GEAR MARKING MODIFICATIONS

Area	Northeast Region Lobster and Jonah Crab Trap/Pot Gear Marking Requirement
State Waters	One 3-foot (0.9-m) state-specific colored mark (based on principal port state) in surface system within 2 fathoms (3.7 m) of the buoy. At least two 1-foot (0.3-m) marks in the state (principal port) color in the primary buoy line, one in the top half and one in the bottom half. Maine exempt waters will be regulated by Maine and not included in Federal regulations.
All Northeast Region Federal waters, except LMA 3.	A 3-foot (0.9-m) state-specific colored mark within two fathoms (3.7m) of the buoy. At least three 1-foot (0.3-m) marks in the state (principal port) color on the top, middle and bottom of the primary buoy line. Additional Northeast Region Federal water mark within 6 inches of each state-specific color: 1-foot (0.3-m) long green marks. For dual permitted vessels, state regulations will determine whether green Federal markings can remain on gear being fished in state waters.
LMA 3	A 3-foot (0.9-m) black mark within 2 fathoms (3.7 m) of the buoy. At least three 1-foot (0.3-m) black marks on the top, middle and bottom of the primary buoy line. Additional Northeast Region Federal water mark within 6 inches of each black mark: 1-foot (0.3-m) long green marks within 6 inches (15.24 cm).

Regulatory Language Changes (Definitions)

This rule adds three definitions to § 229.2. A definition is added for ''Lobster Management Area'' to reference the management areas that were developed for the American lobster fishery, citing the Atlantic Coastal Fisheries Cooperative Management Act regulations at 50 CFR 697.18. A definition for ''surface system'' is added for clarity related to the gear marking requirements. A definition for ''Regional Administrator'' is added to clarify approvals for any new weak insertions and provide information about approved weak insertions on the ALWTRP website.

A housekeeping edit is made to the Table in paragraph (c)(2(iv) completing a blank cell in the table by clarifying that there is no minimum number of traps per trawl in the Southern Nearshore Trap/Pot Waters Area.

Changes to Federal Regulations Implementing the American Lobster Management Plan

In addition to changes to 50 CFR part 229, this rule makes two minor revisions to the Federal regulations implemented under the Commission's Interstate Fishery Management Plan for American Lobster at 50 CFR 697.21. To accommodate conservation equivalencies in Maine Lobster Management Zones, this rule modifies the requirement that limits lobster trap trawls with a single buoy to trawls of no more than three traps to allow up to ten traps on a trawl attached and marked with a single buoy by Maine permitted vessels fishing in some Maine Zones within LMA1. To accommodate changes in the number of traps per trawl in LMA 3, this rule also increases the maximum length of a lobster trap trawl from 1.5 nm (2.78 km) to 1.75 nm (3.24 km), as measured from radar reflector to radar reflector.

Comments and Responses

We published the Proposed Rule to Amend the Atlantic Large Whale Take Reduction Plan to Reduce Risk of Serious Injury and Mortality to North Atlantic Right Whales Caused by Entanglement in Northeast Crab and Lobster Trap/Pot Fisheries and DEIS on December 31, 2020. A 60-day public comment period began on December 31, 2020, and ended on March 1, 2021 (85 FR 86878, December 31, 2020). We reviewed and considered all written and oral public submissions received during the public comment period. Comments on the proposed rule and DEIS were accepted as electronic submissions via *regulations.gov* on docket number NOAA–NMFS–2020–0031, as electronic submissions via email to a NMFS representative, and comments submitted orally at public information sessions and hearings.

In January 2021, we held four public information sessions and in February 2021, we held four public hearings, all virtual due to the global pandemic. The sessions were organized by region, though everyone was welcome to attend any session. Although the purpose of the January meetings was to provide information and answer questions, we accepted oral comments on the proposed rule and the DEIS at all eight meetings. A total of 122 speakers submitted comments orally at public information sessions or public hearings. Many of the speakers submitted more than one comment, and several submitted comments at more than one session. If an individual commented at more than one session, the individual was counted as a unique speaker on each day. We received 2 comments from academic/scientific individuals or organizations, 3 fishing industry associations, 27 non-governmental organizations, 27 members of the public, 59 fishermen, 2 state fishery resource managers, and 2 state/Federal legislators.

We received 171,213 written comments on the Proposed Rule and the DEIS through the comment portal. Of these, six comments from Non-Governmental Organizations were entered as counting for more than one comment: Pew Charitable Trusts: 47,699; Conservation Law Foundation: 1,192; Humane Society of the U.S: 15,922; Oceana: 18,440; Natural Resources Defense Council: 33,045; and Riverkeepers: 4. Five additional comments from Non-Governmental Organization were entered as one comment, but had thousands of signatures attached: International Fund for Animal Welfare: 31,912; Whale and Dolphin Conservation: 3,629; Environment America: 11,727; Center for Biological Diversity: 26,594; and Environmental Action: 11,135.

All of the above-referenced comments, which represent up to 201,269 people, were in favor of stronger regulations to protect North Atlantic right whales. They strongly favored the following measures: Longer and larger restricted areas, increased gear marking, transition to ropeless gear, and a risk reduction target of more than 60 percent. While many were in favor of weak rope or weak link requirements, many also voiced concerns that 1700 lb breaking strength has not been proven to reduce entanglements and could still severely entangle juveniles and calves. In addition, the vast majority urged NMFS to use the most updated population data in setting risk reduction targets and recommended the use of emergency measures to take action immediately.

After accounting for the bulk submissions, we received 53,585 comments uploaded through the *regulations.gov* portal, as well as 9 comments emailed directly to our office, 3 of which were added to *regulations.gov,* and are included in the 53,585 total above. After running a deduplication analysis, identifying additional campaign emails not detected by the deduplication analysis, and reviewing the entries for double submissions or submissions of supporting documentation separate from the original comment letter, we received approximately 1,076 unique comments that were not clearly part of a coordinated campaign. We received 28 comments from academic/scientific individuals or organizations, 2 Federal agencies, 1 Federal resource manager, 2 fishery management associations, 10 fishing industry associations, 2 manufacturers, 71 non-governmental organizations, 617 members of the public, 300 fishermen, 2 representatives from other industries, 32 state/Federal legislators, 7 state fishery resource managers, and 2 towns.

As many of the speakers who submitted comments orally also submitted comments through the *regulations.gov* portal, we considered each individual's comments, both oral and written, as one submission. This gives us a total of 1,129 unique submissions. Combining both written and oral submissions, and excluding duplicates, we received submissions from 28 academic/scientific individuals or organizations, 2 Federal agencies, 1 Federal resource manager, 2 fishery management associations, 10 fishing industry associations, 2 manufacturers, 76 non-governmental organizations, 628 members of the public, 336 fishermen, 2 representatives from other industries, 33 state/Federal legislators, 7 state fishery resource managers, and 2 towns.

Of the 336 unique commenters who identified themselves as fishermen, either directly or through context, 312 voiced opposition to all or part of the rule, 19 commented on particular provisions, but did not expressly support or oppose, and 5 supported the general idea of the rule, though had specific comments on some measures. Of the ten fishing industry groups, eight opposed all or part of the rule, one gave specific recommendations, but did expressly support or oppose, and one supported the general idea of the rule. The primary concerns raised by fishermen are that right whales are not in the areas that they fish and this rule will not protect right whales, but instead will place a large economic burden on fishermen with no benefit for the whales (>147); the economic impact of this rule will put them out of business and devastate coastal communities (>126); and that ropeless fishing is not yet and may never be feasible on a large scale (>105).

Of the 628 unique commenters who identified themselves as members of the public, either directly or through context, the vast majority (534) supported this rule, but expressed the opinion that the rule did not go far enough to protect right whales, with 84 suggesting NMFS use emergency authority to implement immediate protections for whales. Only 54 expressed opposition to the rule. A small number suggested that this rule

should be withdrawn because it does not provide adequate levels of protection for right whales, and NMFS should start over.

To summarize, overall, nearly 59 percent of unique commenters supported the Proposed Rule in whole or in part, with the majority expressing the opinion that the proposed regulations should be strengthened to provide more protection to right whales. A little over 34 percent of commenters opposed the rule in whole or in part, and about 4 percent suggested that the rule should be withdrawn because it does not provide adequate levels of protection for right whales, and NMFS should start over. About 4 percent of commenters did not express support or opposition, but suggested specific measures or strategies that NMFS should employ. In addition, about 14 percent of commenters (who had either supported the rule or suggested starting over) wanted NMFS to take emergency action.

We identified a total of 187 distinct substantive comments that were within the scope of the current rulemaking. The majority of these comments were submitted by multiple people, some of them by thousands of people. We also received several comments that were outside the scope of the current rulemaking, which are summarized below. The final rule and analyses in the FEIS are related to amendments to the Plan. The Plan and the take reduction process are restricted to the monitoring and management of incidental mortality and serious injury of marine mammals in U.S. commercial fisheries. Because these comments were out of the scope of the final rule and the FEIS, we did not provide responses in this document.

Below, we summarize the comments received in the topic category, and then provide specific comments and responses to each. Responses may refer to portions of the FEIS or final rule that have been modified as a result of comments (to obtain copies of the FEIS see **ADDRESSES**). We also made changes to the DEIS and the rule in response to the comments, where appropriate, including updates to data where the comments affect the impact analysis. Technical or editorial comments on the DEIS merely pointing out a mistake or missing information were addressed directly in the body of the FEIS and final rule.

Due to the large number of comments, they are organized according to the following specific topics: 1. Canada, 2. Economics, 3. Enforcement, 4. Gear Marking, 5. Legal Issues, 6. Line/Effort Reduction, 7. Management, 8. Research, 9. Restricted Areas, 10. Ropeless Gear, 11. Stressors, 12. Trawls, 13. Weak Links/Inserts/Rope, 14. Out of Scope.

1. Canada

Of the 1,129 unique comments, around 43 suggested that Canadian fishing gear is largely to blame for the recent right whale mortalities and entanglements, and that Canada needs to do more to reduce right whale mortalities and serious injuries. In addition to these commenters, dozens of others felt it was unfair that U.S. fishermen are being asked to make expensive and time-consuming changes to fishing gear and practices, and many questioned NMFS's apportionment of unknown entanglements in determining how much risk reduction was needed to reduce U.S. commercial fishery interactions to the PBR level established under the MMPA.

Comment 1.1: Canadian fishing gear is primarily responsible for recent right whale entanglements and mortalities, not U.S. fishing gear, and NMFS should not attribute 50 percent of the unknown gear to the United States.

Response: In recent years, gear has only been retrieved from about 54 percent of the detected right whale entanglement events. The majority of the entangling line retrieved is of unknown origin. During 2010–2019, out of 114 documented right whale entanglement incidents, gear was present on 62 whales. Of these, gear could be identified to a country in only 25 incidents (22 percent of all observed incidents): 18 were documented Canadian cases (14 Canadian snow crab, 4 unknown Canadian) and 7 were documented U.S. cases (1 gillnet, 1 lobster, 2 unknown trap, 3 unknown United States). The remaining 37 incidents involved gear of unknown origin (6 unknown gillnet/mesh, 1 unknown trap, 30 unknown line). Out of approximately 1.24 million buoy lines within the Northeast waters from Rhode Island to Maine, we estimate that 72 percent of buoy lines were unmarked under current ALWTRP gear marking guidelines although that percentage was reduced when Maine required gear marks on lobster trap buoy lines beginning in September 2020.

It is important to consider that most right whale mortalities are never seen. Entanglement incidents detected in the Gulf of St. Lawrence in recent years from May to early November may reflect some observer bias as the result of the extensive survey effort since late summer 2017 in an enclosed water body. During most of that season, the whereabouts of the two-thirds of the population that were not detected in the Gulf of St. Lawrence remains largely unknown. While acoustic detections indicate that right whales are present in U.S. waters year round, counts of individuals when spread over large areas remain outside of current capabilities but, given Gulf of St. Lawrence counts, the entire population could be present in U.S. waters from December through April and up to two thirds of them could be present year round. U.S. fisheries fish many more buoy lines than Canadian fisheries. That exposure to U.S. fisheries is balanced, however, by the many broad scale gear modifications in place, as well as seasonal restricted areas implemented under the Plan. However lacking an actual estimate of the proportion of the right whale population's exposure to U.S. or Canadian fisheries each year, in 2019 NMFS apportioned unknown mortality using a 50/50 split that recognized that more whales may be exposed over more months to fishing gear in U.S. waters (suggesting higher opportunity for entanglement) but broad based U.S. conservation measures would reduce mortality and serious injury. This apportionment also recognizes that mortality is occurring on both sides of the border, and that U.S. and Canadian measures are needed to reduce human-caused mortality to this transboundary species to recover the population. For more, see FEIS Section 2.1.5.

Comment 1.2: Canada's current regulations are insufficient, as they rely on dynamic management, which could fail due to lack of visual or acoustic detections, and the delay of weak rope implementation until the end of 2022.

Response: Under the MMPA, NMFS is responsible for U.S. fisheries and protected species within our borders and on the high seas. We work closely with our Canadian partners through bilateral meetings, coordinated disentanglement efforts, distribution and abundance data, health assessment, and gear analysis. Since July 2017, Canada has shown a commitment to reduce the impacts of their fisheries on the North Atlantic right whale population and they affirm that commitment in these bilateral efforts. The Canadian Department of Fisheries and Oceans (DFO) is responsible for fisheries management and protected species within their borders, and any concerns about their management measures should be directed to Canada's DFO.

Comment 1.3: Canada and the United States should collaborate in monitoring, data collection, and technology development to understand whale movements and sources of mortality,

and the United States should pressure Canada into doing more.

Response: NMFS coordinates with Canada on right whale conservation and recovery efforts through bilateral discussions and frequent information sharing with the DFO and Transport Canada at both the senior leadership and staff levels. NMFS senior leadership have had discussions with leadership from DFO and Transport Canada on conservation and management efforts for right whales since 2019, and plan to continue these discussions. We also coordinate and cooperate with DFO and Transport Canada through the Canada and United States Bilateral Working Group on North Atlantic Right Whales. This includes discussing lessons learned on fishing and vessel regulations, planning joint scientific activities (*e.g.,* aerial surveys), and coordinating collaboration across all right whale conservation efforts.

Comment 1.4: Maine's Department of Marine Resources should be allowed to participate in all future bilateral meetings with Canada.

Response: The U.S. Government routinely conducts bilateral consultations with foreign counterparts on issues of fisheries management. Several of these ongoing consultations are founded in formal collaborative agreements, while others occur through less formal arrangements. Discussions often include sensitive topics, such as respective positions being considered for multilateral organizations. Consequently, such consultations are restricted to Federal government personnel.

2. Economics

Approximately 143 commenters voiced concerns that this rule would cause them extreme economic hardship, with some stating that this rule would put them out of business. Many commenters expressed concern about the effects of this rule on the economic health of their communities, the supply chain, and on the state of Maine. Several questioned NMFS' economic analysis and suggested additional factors to consider in the economic analysis. Others were concerned that economics inappropriately and illegally dictated the alternatives considered in this rule; see the Legal Issues section for responses to those comments.

Comment 2.1: The new regulations will drive up costs, making fishermen unable to compete with Canada, resulting in the loss of an iconic U.S. fishery.

Response: Under the Fish and Fish Product Import Provisions of the MMPA published on August 15, 2016 (81 FR 54389), fish and fish products from fisheries identified by the NOAA Assistant Administrator in the List of Foreign Fisheries can only be imported into the United States if the harvesting nation has applied for and received a comparability finding from NMFS. Nations have until November 30, 2021, to apply for Comparability Findings for their fisheries. Beginning January 1, 2023, all nations seeking to continue exporting fish and fish products to the United States must have received Comparability Findings. Beginning in 2023, Canadian lobster and snow crab fisheries will face similar conservation costs for large whale protection if they wish to enter the U.S. seafood market. The new MMPA import regulations are intended to even the playing field.

Comment 2.2: NMFS underestimated the economic costs of the LMA1 seasonal restricted area because it did not take into account; (1) total affected vessels, (2) displacement of effort from those vessels, (3) changes in value to landings.

Response: Based on the comments received, we identified new and updated data sources and have revised our estimation methods. In the DEIS, we relied on the Industrial Economics (IEc) model vessel data and calculated catch per trap using NMFS Vessel Trip Report data. Because only about 10 percent of Maine vessels provide trip reports annually, these data may not have reflected the catch rates and landings achieved by vessels fishing in the seasonal restricted areas. Due to public comments, we updated the analysis using Maine Department of Marine Resources (Maine DMR) harvester and dealer report data to re-estimate the total landings outside 12 nm. Please see FEIS Section 6.3.4.1 for details.

Further, not all landings would be lost when the restricted area is in place. Fishermen are expected to relocate their gear to fishing grounds within the same or directly adjacent Maine lobster management zones. As fishermen commented, vessels already fishing in those adjacent fishing grounds would then be crowded, reducing their catch rates. We have included the crowding effects to other vessels in the surrounding areas in our economic calculations in the FEIS. We also assume a 5–10 percent reduction rate based on the natural lobster mortality rate. Nearly all the lobsters not caught during the restricted area closure are assumed to be caught at other locations or later in the year. Looking at the industry as a whole, the lost value to the entire fleet would be those lobsters dying from natural causes.

In Table 6.12, as one commenter noted, we had incorrect information on the lobster price unit leading to an error in the landings values. The prices displayed in the table are in dollars per pound but should have been calculated as dollars per kilogram. However, the costs in the last two columns are still correct, as they were calculated separately using pounds.

Comment 2.3: NMFS should include the potential benefit of reducing the need for disentanglement efforts in the economic effects analysis. We ask NMFS to evaluate the annual average costs of retaining each disentanglement team, including its equipment, insurance requirements, and staff.

Response: We agree that we should consider this in our economic analysis, and have revised our analysis to include an estimate of disentanglement costs as well as the potential benefit of reducing the need for disentanglement efforts. See the qualitative and quantitative discussion in FEIS Section 9.6.4.

Comment 2.4: The DEIS does not analyze the economic benefits of ropeless fishing.

Response: This rule does not require fishermen to fish with ''ropeless'' fishing gear. However, in response to commenters, we added some analysis of the economic costs and benefits of ropeless fishing to FEIS Section 6.3.3, and some details of anticipated impacts can be found in response to comments below in response to Comment 9.4.

Comment 2.5: The Proposed Rule fails to account for the full benefits of weakening vertical lines to reduce mortality and serious injury from entanglements. The full benefits should be taken into account in the development of a final rule.

Response: All cases where full weak rope was not implemented were analyzed according to the proportional risk reduction of the number of inserts compared to the equivalent of full weak rope (an insert every 40 feet). Please see FEIS Section 3.3.4 and 5.3.1.3 for a description of how the use of weak rope was analyzed and the anticipated impacts on large whales. FEIS Sections 5.3.2.3 and 5.3.4.3 discuss the expected impacts on other protected species and protected habitat.

Comment 2.6: NMFS should consider the costs already incurred under previous take reduction measures, and the effectiveness of those measures, and should standardize a review of its economic analysis based on the actual impact of previous rules.

Response: In the FEIS, we revised our analysis to provide as much information as possible about the costs already incurred under previous take reduction

measures. However, these economic impacts are not directly related to current rulemaking, so would not be included in the final costs. Under Section 610 of the Regulatory Flexibility Act, NMFS is required to review any significant rule to evaluate the continued need for regulation. Our review procedures include a summary of the expected economic impacts contained in the final rule, as well as a summary of any changes in technology or economic conditions that may have occurred since. To allow for sufficient time for economic adjustments to occur and for data to become available, we review rules every seven years. The most recent ALWTRP rule was published in 2015, and will be coming up for review shortly.

Comment 2.7: Did economic analysis take into account fishermen from outside Maine, New Hampshire, Massachusetts, and Rhode Island, as there are some fishermen from New York and Connecticut that may be affected?

Response: This rulemaking applies to lobster and Jonah crab fisheries in the Northeast Region Trap/Pot Management Area (Northeast Region). Please see FEIS Chapter 1 for the regulated waters map. In the DEIS, we only included fishermen from Maine to Rhode Island. In the FEIS, we identified a few New York fishermen that fished within the regulated area and we revised our analysis to include the economic impacts to those lobster and Jonah crab fishermen. No Connecticut fishermen were identified in the regulated waters. Due to data confidentiality requirements, those New York fishermen were combined with Rhode Island LMA 2 vessels and LMA 3 vessels in the analysis.

Comment 2.8: This rule will drive small fishermen out, and the fleet will become consolidated into larger corporate operations, destroying iconic tourist-drawing fishing communities and resulting in cultural loss.

Response: A number of the measures including trawling up and weak insertion requirements were initially developed by Maine DMR after extensive outreach with Maine fishermen. Fishermen indicated that the trawling up and weak insertion measures could be done by reconfiguring existing trawls and buoy lines, reducing impacts of wholesale replacement of gear. Based on recommendations from the public, fishermen and state agencies, we have modified the alternatives in the FEIS to include conservation equivalencies in Southern New England, LMA 3, and Maine Lobster Management Zones out to 12 miles. As requested by Rhode Island fishermen and supported by the state, we analyzed the use of weak rope instead of trawling up measures for LMA 2. Fishermen indicated they could not support longer trawls unless they invested in a new vessel or vessel modifications. An analysis of risk reduction determined that this provided equal or better risk reduction. The final rule applies weak rope measures identical to the Massachusetts state measures for LMA 2 and does not require further trawling up. Similar concerns expressed by LMA 3 fishermen resulted in the implementation of trawling up restricted areas with varying trawling up requirements. Conservation equivalency measures provided by Maine fishermen and Maine DMR allow fishermen to choose between different trawl lengths with one or two buoy lines, or use more weak inserts instead of trawling up based on fishing practices in the Maine lobster management zones.

Comment 2.9: Does the economic analysis of gear conversion take into account the replacement savings of current gear that is nearing the end of its lifespan?

Response: We have revised our analysis to include this in the FEIS. Since it is difficult to estimate the life stages for all gears in the regulated areas, we applied new gear prices for current gear requirements in the DEIS.

When vessels modify their gear configurations by trawling-up to add more traps between trawls, they can save some gear costs from the reduction in surface system like buoy lines, buoys and radar reflectors. These savings are calculated using new gear prices.

For weak rope measures, in Alternative 2 (Preferred) and the final rule, weak rope can be inserted into current ropes, so no large-scale replacement of buoy lines is needed. Estimated costs of inserts assume the rope or sleeve is new. In Alternative 3, which requires fully engineered weak rope to replace the current rope, the compliance costs would be the difference between fully weak rope and regular rope. We also use new gear prices for both ropes.

Comment 2.10: Fishermen should be compensated for the time it takes to mark all the gear.

Response: Currently there is no mechanism by which NMFS is able to compensate fishermen for gear marking costs. A program of that nature would require Congressional appropriations. Similar programs have been made available to fishermen in the past. Note that effective gear marking could help fishermen and the government avoid additional regulatory burden in the future by better identifying areas where interactions are likely and unlikely to occur.

Comment 2.11: The costs of lost gear from new weak rope requirements should have been considered in the evaluation of economic effects.

Response: We discussed this issue qualitatively in FEIS Section 6.2.6.1.

Comment 2.12: The economic impacts of gear marking, including the time already spent marking gear, should have been included in the economic impact analysis because the rules were implemented in direct anticipation of the Proposed Rule.

Response: Other than the gear marking costs for fishermen fishing within Maine Exempt waters, who will be regulated by the state of Maine, we revised the analysis to include estimates of the gear marking costs (both material and labor costs). This revision is in response to public comments correctly noting that Maine implemented gear marking measures in anticipation of this final rule. However, improved information regarding the location of large whale entanglement related mortalities and serious injuries may allow future tailoring and reduced economic impacts of regulations.

Comment 2.13: The evaluation of the economic effects of this rule should have included all parts of the supply chain, such as lobster processors, dealers, gear suppliers, trap builders, rope and line manufacturers, and restaurateurs.

Response: We quantitatively evaluated the economic impact of the final rule as it applies to the lobster and Jonah crab trap/pot fisheries in the Northeast. We recognize that these changes could impact the broader supply chain, as well as local communities and economies in ways that are not easily quantifiable. In FEIS Section 6.7.2.2, we include a qualitative evaluation of the socioeconomic impacts to fishing communities.

Comment 2.14: Fishermen should get economic assistance/subsidies to cover the costs of gear changes and lost revenue.

Response: Given the vast amount of industry input into the development of weak insertions, which would not require fishermen to replace buoy lines, and trawling up measures, many gear modifications implemented in the final rule were created to control costs. However, the economic analysis in Chapter 6 indicates the first-year cost of this rulemaking is $9.8 to $19.2 million, which is 3 percent of the landings value of the lobster fishery in 2019. Some of those costs are likely to be passed on to

the consumer but economic impacts to fishermen are anticipated.

In December 2019, $1.6 million in Federal funds were reprogrammed to support recovery actions for the North Atlantic right whale in the lobster/Jonah crab trap/pot fishery. The funds were made available to fishermen through our partnership with the Commission. The funds were obligated to the Commission and have been distributed to Maine, New Hampshire, Massachusetts, and Rhode Island to assist the lobster/Jonah crab trap/pot fishery in adapting to and comply with the measures in this final rule and to help defray costs to support affected fishermen broadly. Maine and Massachusetts have used funds to improve reporting (Maine) and to support a gear liaison to collaborate with fishermen to develop and test weak insertions. New Hampshire and Rhode Island plan to use funds to purchase rope for fishermen once the rule becomes effective. At this time additional funds have not been appropriated by Congress or further reprogrammed to reimburse fishermen.

Comment 2.15: NMFS should reevaluate the use of Automatic Identification Systems (AIS) to track vessel locations and movements, and not dismiss it from consideration as an alternative based on expense.

Response: NMFS supports the collection of high-resolution spatial data in the lobster fishery and intends to continue to work with the Commission, through their technical working group, to develop data collection objectives and requirements, while balancing the financial burden to industry. Included in ongoing discussions are specifications needed to determine whether options less expensive than AIS systems can be used effectively. A basic vessel tracking system costs between $500 and $1,300, while a more advanced AIS system costs between $750 and $3,500. AIS devices also have ongoing operating costs. In relation to the overall size and value of the lobster fishery (approximately $600 million), for example, the cost of vessel tracking technology is small in light of the benefits it provides in the form of real-time fishery monitoring as well as safety to prevent vessel collisions. We anticipate continued investigation into the appropriate vessel tracking specifications to meet the needs for lobster and right whale management and, if appropriate, would pursue rulemaking within the next few years to require vessel tracking for federally permitted vessels fishing for lobster.

Many lobster vessels are smaller than 65 feet and therefore not currently required by law to carry AIS. While the individual cost of AIS systems are low compared to the value of the fishery, outfitting the entire fleet with AIS would not be a cost effective approach to monitoring, due to the trap-setting nature of the fishery. Other vessel tracking methods are being piloted by the Commission that are more responsive to tracking the movements of lobster boats, such as setting and hauling back. NMFS will work with them to regulate this monitoring approach.

Comment 2.16: In doing its economic analysis, NMFS did not consider the ecological value of right whales, and the role they play in a healthy environment, including their role in carbon sequestration.

Response: In Section 9.6.1 of the DEIS, we discussed the value of large whale protection in non-consumptive use benefits and non-use benefits. We provided the total expenditure of the whale watching industry as a proxy for non-consumption use value, and we provided a list of research results on the willingness to pay for whale protection programs from society as a proxy for the non-use value. In FEIS Section 9.6, we revised our analysis to include recent studies on the ecological and economic value of large whales.

Comment 2.17: The DEIS does not include a reference to the Meyers and Moore 2020 paper that suggests a reduction in effort brought about by time/area closures and removals of traps and lines from the water may reduce costs.

Response: When we prepared the DEIS in spring 2020, this Meyers and Moore (2020) paper had not yet been published. We have updated the FEIS and this paper has been cited. See FEIS Section 6.5.1.

Comment 2.18: The economic and social impacts analysis fails to consider the impact that the ongoing COVID–19 pandemic has had on demand for the fisheries. In the first six months of 2020, U.S. exports of lobster declined by 44.6 percent (FAO Globefish 2021) and that significant uncertainty regarding the duration and extent of these impacts remains.

Response: The full consequences of COVID–19 on the U.S. lobster and Jonah crab trap/pot fisheries cannot yet be determined. In the first half of 2020, the U.S. fishing and seafood sector experienced broad declines due to COVID–19 protective measures instituted in March 2020 across the United States. While lobster fishing effort and demand for lobster were low in the first half of 2020, landings increased and prices rose as the year went on. Maine, the state that has the most active and valuable lobster fishery, reported preliminary data that indicated that the value of lobster landings in 2020 exceeded $400 million for only the seventh time (Maine DMR constituent email, March 24, 2021). The catch volume was reportedly 5 percent lower than 2019 landings but the vessel price was $0.44 higher per pound than the average price over the previous ten years. While the uncertainty caused by COVID–19 on communities that rely on lobster and other fisheries cannot be understated, in the Gulf of Maine, where lobster stocks are healthy, the fishery appears to be somewhat resilient.

Comment 2.19: The costs of compliance fail to account for economic losses associated with shorter equipment durability and lifespan caused by the proposed weak ropes, insertions, and trawling up.

Response: See the description of gear loss costs in Chapter 6, section 6.2.6.1. Gear loss is not included in the final costs estimation because the effect of trawling up on gear loss is unclear and not thought to be substantial. We also currently have no evidence that weak rope or weak inserts would cause significantly more gear loss. In a study of weak inserts conducted by New England Aquarium for the Massachusetts Office of Energy and Environmental Affairs, Knowlton *et al.* (2018) documented sleeves designed with reduced breaking strength breaking in only 11.8 percent of hauls relative to 8.5 percent of control buoy lines, which they did not find statistically significant. Some fishermen who have used the South Shore Sleeves for several years have incurred no significant increase in extra gear loss. NMFS will continue to test and evaluate the use of weak inserts to ensure they are not likely to contribute to an increase in ghost gear. See Section 5.3.1.3.2 for a description of the anticipated indirect effects of trawl length and weak rope measures, including the likelihood of gear loss. Also note that lobster landings dropped in 2020 due to COVID–19 but the 2020 lobster average price was the second highest in the past decade, about $4.4/lb.

Comment 2.20: The DEIS exclusively uses the Federal dealer data to analyze the commercial impact to the industry, not the full value of the supply chain, and so underestimates the true cost.

Response: For our analysis of the impacts on commercial fisheries, the dealer data provides the most accurate information. Although we have some information of the total economic value of the supply chain in Maine, it is difficult to estimate the impacts of the proposed rule on it. The biggest impact

on the supply chain from the rulemaking would be the short-term landing reduction. There could be some negative impacts in the near term, but also could benefit the industry in the long run. We discussed this issue briefly in FEIS Section 6.7.2.2.

Comment 2.20: NMFS's economic analysis fails to properly consider that reduced effort does not equate to reduced catch.

Response: For reduced effort in restricted areas, under the scenario where fishing is suspended, we assumed fishermen would lose all their revenue during the closed fishing period, which was the more conservative estimate. We recognize the costs could be overestimated in section 6.3.1.2 ''Caveats''. Under the scenario where effort is relocated, we assumed a 5 percent to 10 percent landing reduction in the first year, and we also applied a decreasing rate of landing reduction for the impacts of restricted areas.

3. Enforcement

About 14 commenters voiced concerns that this rule would be difficult to enforce, and 11 commenters including the United States Coast Guard, suggested that NMFS needs to develop a comprehensive enforcement plan for the areas affected by this rule. As noted in the FEIS, lobster trap/pot gear makes up the vast majority of buoy lines fished in the Northeast Region, making compliance with regulations paramount to the rule's ultimate success or failure in reducing right whale mortalities and serious injuries.

Comment 3.1: NMFS should develop a comprehensive monitoring and enforcement plan to ensure compliance. One commenter stated that there is currently no enforcement in Massachusetts, New Hampshire, and LMA 3, and another stressed the importance of including states in the development of any enforcement plan.

Response: State partnerships serve a significant role in effective regional enforcement activities. The Office of Law Enforcement-Northeast Division (OLE–NED) has Joint Enforcement Agreements (JEA) in place with ten New England and Mid-Atlantic coastal states (Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia). The following states perform inspections of lobster gear in Lobster Management Areas: Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, and New Jersey. The following states perform inspections of black-sea-bass gear in Lobster Management Areas: Delaware, Maryland, and Virginia. OLE–NED has developed and implemented a pilot program using remotely operated vehicles (ROVs) to inspect offshore fishing gear, including in LMA 3. The pilot project will inform future offshore enforcement activities for ALWTRP compliance monitoring efforts Additional information on this pilot program is provided in response to Comment 3.2. OLE–NED has identified a number of elements to review, in partnership with the states and the United States Coast Guard, to help develop a more comprehensive enforcement strategy for the ALWTRP regulatory requirements. Appendix 3.5 of the FEIS provides a high-level overview of compliance monitoring plans and associated enforcement assets.

Comment 3.2: Several commenters noted that enforcement in the offshore areas, particularly LMA 3, is sparse, and question whether Marine Patrol will be able to do gear inspections on longer trawls.

Response: Traditional methods of hauling gear in offshore waters for compliance monitoring poses both safety and sustainability challenges. To meet these challenges, OLE–NED developed and implemented a pilot program using ROVs to inspect offshore fishing gear. OLE–NED has conducted offshore subsurface ROV surveys to check for sinking groundlines, gear markings, and weak links in previously uninspected areas. Gear tags were also inspected when possible. After initial trials, OLE has determined that ROV-based inspection of gear in the water is a safer and more efficient way to enforce offshore lobster gear requirements, rather than physically pulling the gear. The pilot project was carried out in FY2020 and FY2021, and will inform future offshore enforcement activities for ALWTRP compliance monitoring efforts.

Comment 3.3: How will NMFS be able to enforce the different requirements in different areas, as fishermen move from area to area?

Response: NOAA's Office of Law Enforcement partners with state agencies and the United States Coast Guard to enforce all applicable lobster regulations nearshore and offshore. Fishermen are required to adhere to the regulations in the areas they fish. In Maine Lobster Management Zones, where conservation equivalencies established by zone and distance from shore present the greatest enforcement challenge, the Maine Marine Patrol assured us that they use outreach, education, and enforcement to establish and maximize compliance, are very familiar with Maine's lobster management zones and boundaries, and that ''. . . enforcement of most restrictive rules relative to lobster zones does not present any significant challenge . . .'' (email from Erin Summers, April 20, 2021). Offshore enforcement poses challenges that enforcement partners have been evaluating in recent years. While OLE does not disclose specific law enforcement techniques, as discussed above, OLE has started deploying ROVs to inspect offshore gear. OLE welcomes and encourages the public to report violations to their hotline.

4. Gear Marking

A total of 75 commenters supported gear marking, indicating that gear marking is the best way to determine where and in which fisheries entanglements occur, and potentially absolving other areas and fisheries of blame. Gear marking was universally supported by conservationists and fishermen. Several Maine fishermen commented that they had already completed their required gear marking, and many are expecting the results to show that Maine's lobster fishery does not entangle whales.

Comment 4.1 NMFS should give Maine's lobster fishery a three-year evaluation period to make sure that Maine's rope (now with purple marks) is not causing entanglements before adding any other requirements.

Response: The results of Pace *et al.* 2021 show that in the years 1990–2009, roughly eight right whales per year died, many unseen. Since 2010, on average 21 right whales per year have died. Recent observations indicate that the increase in mortality since 2010 is in part due to a significant amount of mortality in Canadian waters and/or from Canadian fishing gear. However, the sources of the unseen mortality (roughly eight whales per year) that has existed for decades remains uncertain and the effects of the Plan's measures cannot be evaluated (Pace et al. 2017) and likely has not reduced mortality and serious injury below one per year as required to meet MMPA goals.

If current trends continue, even accounting for a mean of 11 births per year over the last 10 years, we could expect to lose another 30 whales over the next 3 years, or 10 whales per year. Pace *et al.* (2021) estimates that approximately 368 right whales were alive at the end of 2019. At the current rate of decline, we would expect the 2020 population to be 358. If we wait 3 more years to implement risk reduction regulations, the population could be as low as 328. We are required by the

MMPA to take action now. See FEIS Chapter 1 for more information on the need for immediate action.

We expect gear marking and acoustic and aerial surveys to help us further identify the areas of most risk to right whales. Until we have additional information, we must regulate based on the best available science: Maine has the highest concentration of all vertical line gear in U.S. waters, and right whales are still using Maine waters.

Comment 4.2: There should be an exemption for hand-hauled lobster traps in less than 100 feet of water, because when traps are pulled by hand, the vertical lines are not cleared of organisms on the rope as they would be when a pot hauler is used.

Response: It is unclear what exemption is being requested by the commenter, as no exemption fitting this general description was included in the final rule. The request may be for an exemption from gear marking requirements because marks may be obscured by fouling. While this may reduce the ability to see marks from a vessel, gear marks would be detectable from line retrieved from a whale.

Comment 4.3: We received comments from some who support the idea of individual ID tags that would allow NMFS to identify the fisherman whose gear entangles a whale, as well as from others who oppose individual ID tags.

Response: Current regulations require buoys to be marked with information that can be traced back to individual fishermen. Buoy and individual line tagging technologies exist, but this method of marking comes at some cost and the benefits are unclear. Gear is not always recovered and often buoys or traps are not present on the entangled whale. Line marking technology, such as identification tape (*i.e.,* marker tape) that is woven into line, is expensive and is difficult to enforce without severing the buoy rope. Radio frequency identification and passive integrated transponder tags are also expensive, require standardized tag readers to adequately enforce, and in field trials have not held up well in commercial fishing conditions. As the technology improves and the costs are reduced, NMFS will continue to monitor the possibility of line identification tape. We are not requiring individual markings in this rulemaking.

Comment 4.4: One commenter proposed dividing Massachusetts and Maine into smaller subdivisions with distinct markers to allow NMFS to develop more accurate and targeted marine policy, and another suggested weak rope should be marked or colored to identify it as weak rope.

Response: Current regulations include some small zones of multiple colored marks but given the rarity of gear retrieval, the value of small area marking requirements is not yet proven. Gear marking is one of the most expensive elements within the proposed regulations and increasing complexity adds expense without proven benefits or any risk reduction. Regarding requiring weak rope to be identifiable with a color or marking scheme, NMFS does not regulate rope manufacturers. However, we are asking them to create intentionally engineered weak rope with a tracer or a strand of a contrasting color. Weak insertion approval has included a requirement of a contrasting color to allow both enforcement and disentanglement teams to recognize the weak insertion.

Comment 4.5: NMFS should not require any additional gear marking beyond what is already in place.

Response: Currently, the majority of gear recovered has no identifiable marks and until Maine established gear marking requirements in Maine exempted waters, over half of all U.S. buoy lines were unmarked. In order for the ALWTRT to make better recommendations, including those that could allow more targeted gear modifications and closures, the Team needs a better understanding of the types and locations of rope that entangle whales. The more robust gear marking scheme included in the final rule, including some markings largely supported by the ALWTRT and states, should increase our ability to identify the gear, and subsequently, identify more targeted and more effective measures to reduce entanglements.

Comment 4.6: Gear marking should be required for all fisheries in the right whale migratory path.

Response: The ALWTRP covers commercial fisheries within the right whale migratory path from Florida to Maine. While, historically, the majority of gear recovered from right whale entanglements has been unknown, state regulations and the final rule expand the gear marking schemes substantially for the lobster/Jonah crab fishery, which contributes the vast majority of vertical lines in these waters. The new gear marking requirements should increase the frequency with which we encounter gear marks on recovered rope from entanglements and enable visual identification of state of origin from aerial and vessel-based platforms. The ALWTRT has begun meeting to develop recommendations related to reducing the risks posed by other U.S. fisheries in right whales range. In recent years, Canada has also implemented gear marking requirements for Canadian lobster and snow crab fisheries.

Comment 4.7: NMFS should require gear markings every 17 fathoms, so that gear markings will be at the same intervals regardless of the total length of the rope.

Response: The large number of different fisheries operating at various depths managed under the ALWTRP makes it difficult to implement a single gear marking structure. For those fisheries occurring in deep offshore waters, this rule more than doubles current gear marking requirements but may not result in marks as frequent as every 17 fathoms (31 m). However given the large number of buoy lines in shallower waters, one marking every 17 fathoms (31 m) would be a reduction in gear marking compared to what we have in the final rule.

Comment 4.8: Several commenters suggested that sinking groundlines should be marked to distinguish them from vertical lines, while others supported not requiring any gear marking on sinking groundlines.

Response: Groundline marking has not been extensively discussed by the ALWTRT in recent years. Under current ALWTRP and in this final rule, no gear marking will be required for sinking ground lines.

Comment 4.9: Why are the gear marks required to be 3 feet long (0.91 m), and would that be useful in murky water?

Response: Gear marking and fishery identification relies mainly on recovering gear from entangled whales, making the water clarity a negligible component of gear identification. However, the proposed larger 3-foot (0.91 m) mark within 2 fathoms (3.65 m) of the surface system should help identify gear from vessel and aerial platforms, as the surface system will keep the line in relatively clear water. The mark could also provide useful information for disentanglement teams, and may allow gear identification in cases where whales are photographed, but not seen again.

Comment 4.10: Any final rule should include requirements for all buoy lines to be marked the full length of the vertical line, or at the very least, markings every 40 feet, and in such a way that the location of where gear was set can be known even in cases when a buoy is not seen or retrieved.

Response: The final rule increases the number of marks with additional distinction between Federal and state waters, offering better spatial resolution than those in the Proposed Rule. The marks will also be longer in length to increase the likelihood that a mark will be spotted without a buoy. However, it

was determined that marking every 40 feet would be costly without a commensurate benefit given that since 2010 gear has only been retrieved from about 40 percent of the observed right whale entanglements.

Comment 4.11: Time consuming gear marking regulations should be implemented during the off season, as otherwise gear making will reduce the time available for fishing.

Response: We recognize this issue, and this rule will include a delayed implementation date to allow time during slow seasons as practicable for gear configuration and gear marking changes.

Comment 4.12: Can we alert whales to the presence of ropes with visual or acoustic cues?

Response: Research conducted by Kraus, Fasick, Werner and McFarron (2014), and Kraus and Hagbloom (2016), suggested that red and orange lines may be visually detectable by North Atlantic right whales at greater distances than other colors although it is unclear to what depths color can be detected or whether detection results in avoidance. For more information on gear marking measures included in this rule, please see Table 3.3. Unlike toothed whales that use echolocation to sense their surroundings, baleen whales like right whales are not detecting fishing gear acoustically and acoustic cues are unlikely to result in gear avoidance in the same way that pingers have been successful at reducing entanglements of harbor porpoises, for example.

5. Legal Issues

Approximately 28 commenters believe that the Proposed Rule violated the requirements of the MMPA, the ESA, the National Environmental Policy Act (NEPA), and/or the Administrative Procedure Act (APA). Most of these concerns were raised by NGOs, including but not limited to: Whale and Dolphin Conservation, Oceana, Center for Biological Diversity, Conservation Law Foundation, Defenders of Wildlife, Humane Society of the United States, Natural Resources Defense Council, PEER, Clearwater Marine Aquarium, Georgia Aquarium, Southern Environmental Law Center, as well as the Maine Lobstering Union, and many Federal and state legislators.

Comment 5.1: NMFS refusal to evaluate some strategies, including but not limited to certain trap reductions, weak line enhancements, static area closures, and gear marking strategies, was ''arbitrary and capricious'' under the APA.

Response: The development of the Proposed Rule was the result of an extensive public process involving challenging negotiations within the ALWTRT and ample opportunity for public input as prescribed by the MMPA, NEPA, and the APA.

Many options were considered, deliberated, and evaluated by the ALWTRT, the public, and NMFS, and some were modified or eliminated from further consideration as the process unfolded. Where the measures considered in the final rule would also affect state fisheries, the input of state fisheries agencies was important to ensure that conservation measures were feasible and safe in the various locations in which they would apply. State scoping and outreach helped inform the rulemaking efforts, and helped identify the measures that would be given extensive consideration in the NEPA process.

The final rule and FEIS reflect this extensive involvement by the numerous stakeholders and considered a reasonable range of alternatives.

Comment 5.2: Proposed rule and DEIS violated Executive Order (E.O.) 12898 by not reviewing issues of environmental justice, particularly for Maine's Washington County.

Response: E.O. 12898 requires agencies to consider whether their actions result in disproportionately adverse human health and environmental impacts on minority or low income populations. The DEIS addressed E.O. 12898 by examining the various counties affected by the ALWTRP rulemaking, and concluding that minority and low impact communities will not be disproportionately affected.

While Washington County has higher than state average low income and minority populations, Washington County is not disproportionately affected by adverse health and environmental impacts from the rulemaking when compared to other counties. Where the impacts of the ALWTRP rulemaking extend over a large area across multiple states, the county level is an appropriate level at which to assess whether the rulemaking would result in disproportionate impacts.

The commenter's concerns appear to be economic in nature, as opposed to adverse human health and environmental impacts, which are the focus of E.O. 12898. See FEIS Section 10.12 for a complete analysis of this rule as it pertains to E.O. 12898.

Comment 5.3: NMFS' authorization of lobster and Jonah crab trap/pot fisheries violates the ESA by allowing entanglements.

Response: NMFS has satisfied its obligations under the ESA by reinitiating consultation on the operation of Federal fisheries under eight Federal fishery management plans and two interstate fishery management plans, which was completed on May 27, 2021, and consulting on the amendment of the ALWTRP itself, which was completed on May 25, 2021.

The ALWTRP does not authorize fisheries. NMFS disagrees with the commenter's claims that the ALWTRP ''allows'' entanglements. The ALWTRP does not state that entanglements are allowed, nor does it prevent fishermen from taking actions to avoid or prevent entanglements beyond what is required by this rule.

Comment 5.4: Allocating the full PBR to the trap/pot fishery violates the MMPA.

Response: MMPA Section 118 directs NMFS to develop take reduction plans to reduce the incidental mortality and serious injury of marine mammals incidentally taken by commercial fishing operations to levels less than a stock's PBR level. Section 118 does not address other sources of human-caused mortality (*e.g.,* vessel strikes) and those other causes are not considered in the goals of the take reduction plan. The short-term goal of a take reduction plan is to reduce incidental mortality and serious injury of each marine mammal stock to below the stock's PBR in the commercial fisheries addressed by the plan, with a longer term goal of reducing incidental mortality and serious injury to 10 percent of a stock's PBR taking into account economics, available technology, and existing fishery management plans. NMFS has already reconvened the ALWTRT to develop recommendations for gillnet and other trap/pot fisheries.

Additionally, the FEIS analyzes other sources of impacts on right whales. Although beyond the scope of this rule, NMFS has identified evaluation of current measures to protect right whales from vessel strikes, as well as research into factors affecting health and abundance, collaboration with Canada on range-wide recovery efforts, and consideration of emerging threats as 2021 to 2025 priority actions in the right whale 5-year Species in the Spotlight action plan.

Comment 5.5: The Proposed Rule violates the MMPA by considering economics as a factor when choosing the preferred alternative.

Response: The commenter argues that NMFS is prohibited from considering the economic impacts of measures to be implemented in a Take Reduction Plan unless such measures are part of the

MMPA's long-term goal of reducing mortality and serious injury to insignificant levels approaching a zero mortality and injury rate (often referred to as ZMRG). However, the distinction drawn by the commenter does not accurately reflect the statute. Under the MMPA, to reach the long-term goal requires the TRP to take into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans. The portion of the MMPA discussing the short-term goal of reducing mortality and serious injury to below a stock's PBR does not use this language. However, that does not mean that economics, technological limitations, and state or regional fishery management plans cannot be part of the consideration as to which measures should be chosen to achieve the short-term goal. Here, NMFS developed a 60–80 percent risk reduction target based on the latest PBR calculations and estimates of mortality and serious injury, and the ALWTRT developed recommendations based on this target. In choosing between measures that will accomplish the goal of reducing mortality and serious injury below PBR, the MMPA does not prohibit the consideration of economics, and here the agency's choice of measures to include in the final rule balances various factors, but does not do so at the expense of the risk reduction target to reach the short-term goal.

Comment 5.6: The Proposed Rule violates MMPA by not meeting ZMRG within 5 years.

Response: Under section 118 of the MMPA, NMFS is required to meet both the short and long-term take reduction plan goals of reducing mortality and serious injury incidental to commercial fishing operations. The short-term goal is to reduce mortality and serious injury to below a stock's PBR, while the long-term goal is to reduce mortality and serious injury to insignificant levels approaching a zero mortality and serious injury rate (*i.e.,* ZMRG, defined as 10 percent of PBR in 50 CFR 229.2), taking into account the economics of the fishery, availability of existing technology, and existing state or regional fishery management plans.

Due to the continued entanglements of large whales in commercial fishing gear, NMFS is required to take additional action to further reduce mortality and serious injury incidental to commercial fisheries covered by the ALWTRP. NMFS will continue to discuss future plan modifications with the ALWTRT and has already reconvened the Team in light of these goals.

Comment 5.7: The Proposed Rule violates MMPA by not reducing PBR in six months.

Response: The MMPA created a framework for developing and issuing take reduction plans, monitoring the plans regularly, meeting with take reduction teams regularly, and amending plans if necessary to meet the goals of the MMPA. NMFS' actions have been consistent with the process laid out by the MMPA.

The first ALWTRP was issued in 1997, and NMFS has modified the ALWTRP numerous times since, with input from the ALWTRT to further the MMPA goals of reducing mortality and serious injury of large whales incidental to commercial fisheries.

As we state in the preamble to the final rule, for the purposes of creating a risk reduction target, NMFS assigned half of the right whale entanglement incidents of unknown origin to U.S. fisheries. Under this assumption, a 60 percent reduction in mortality or serious injury would be needed to reduce right whale mortality and serious injury in U.S. commercial fisheries, from an observed annual average of 2.2 to a PBR of less than one whale per year. See Chapter 2 of the FEIS for our revised analysis of PBR.

Comment 5.8: These additions to the ALWTRP may not prevent the continued decline of right whales.

Response: NMFS tasked the ALWTRT with developing measures to reduce risk of entanglement to meet the MMPA's goals that fisheries mortality and serious injury should be below PBR. It is not within the agency's discretion to disregard PBR, and the current rulemaking is the agency's attempt to reduce the risk of mortality and serious injury from the Northeast lobster and Jonah crab trap/pot fisheries to comply with the MMPA. That such measures in and of themselves may not result in recovery of the right whale population does not mean that NMFS can disregard the statutory direction of the MMPA.

Comment 5.9: State measures should be included in the final rule.

Response: NMFS agrees that the MMPA authority applies in both state and Federal waters. Many state measures are included in the final rule, including Massachusetts weak insertion requirements and extension of the MRA north to the New Hampshire border. Because dynamic management is difficult to accomplish under Federal procedural requirements and such measures were not part of the proposed rule, the Massachusetts extension of the state water closure into May was not included. Other Massachusetts measures, such as a maximum state water line diameter, were not included because they were not analyzed or part of the proposed rule.

Comment 5.10: NMFS ''Purpose and Need'' statement is too narrow.

Response: The Purpose and Need chapter of the FEIS states that the measures need to achieve a risk reduction of at least 60 percent, rather than an exact risk reduction target, and therefore, it was not meant to constrain the risk reduction to a specific number. Rather, this is the minimum target needed. Both of the action alternatives considered in the DEIS met the Purpose and Need. The Alternatives have been modified in the FEIS.

The Alternatives were selected because, using the Decision Support Tool, these suites of measures, which include ongoing and anticipated fishery management measures, measures that will be regulated by Maine and Massachusetts, and the benefits of the MRA, are estimated to achieve or exceed a 60 percent risk reduction necessary to reduce impacts to right whales to below the PBR level of 0.8 mortalities or serious injuries per year based on observed incidents. Thus, mortality and serious injury of right whales in U.S. fishing gear must be reduced by 60 percent (documented) to 80 percent (estimated) to achieve the MMPA goal of reducing fishery-related incidental mortality and serious injury to below the right whale PBR.

For more information on the Decision Support Tool and the input data, assumptions, and uncertainty please see FEIS Appendix 3.1.

In terms of the ESA, the final rule has been identified as a first anticipated step in the adaptive management approach within the conservation framework in the Section 7 Consultation on the authorization and permitting of a number of Federal fisheries, including lobster and Jonah crab. Additionally, a consultation on the ALWTRP which included the implementation of final rule determined that the gear regulations implemented by the Plan for U.S. fixed gear fisheries including those measures in the final rule will have wholly beneficial effects to ESA-listed species or their critical habitat and therefore the Plan is not likely to adversely affect ESA-listed species or designated critical habitat.

Comment 5.11: NMFS cannot rely on CEQ's recent amendments to NEPA.

Response: Because the Notice of Intent to prepare an Environmental Impact Statement (84 FR 37822, August 2, 2019) was published prior to September 14, 2020, this action was prepared under the NEPA regulations first implemented in 1978. Text has

been added to the Purpose and Need section (FEIS Section 2.2) to reflect this. As written, the FEIS addresses direct and indirect impacts in Chapter 5 (Biological Impacts), Chapter 6 (Economic and Social Impacts), and Chapter 7 (Summary of Biological, Economic, and Social Impacts). Cumulative Effects are addressed in Chapter 8, which also summarizes the direct and indirect impacts of the action as well.

Comment 5.12: NMFS failure to consider a ''no commercial fishing'' alternative is in violation of NEPA.

Response: Not allowing any commercial fishing is not a reasonable alternative under NMFS' regulatory responsibilities, namely the Magnuson-Stevens Act, and does not meet the Purpose and Need of the action nor the goals of the Plan. Per the agency's mission, NMFS is responsible for the stewardship of the nation's ocean resources and their habitat. We provide vital services for the nation: Productive and sustainable fisheries, safe sources of seafood, the recovery and conservation of protected species, and healthy ecosystems—all backed by sound science and an ecosystem-based approach to management.

Comment 5.13: NMFS did not evaluate a reasonable range of alternatives or all reasonable measures in violation of NEPA.

Response: The development of the Proposed Rule was the result of an extensive public process involving the ALWTRT as prescribed by the MMPA, NEPA, and the APA. Many alternatives were considered, deliberated, and evaluated by NMFS, the ALWTRT stakeholders, and the public, but some were eliminated from further consideration as the process unfolded. For example, while the non-preferred alternative considered a reduction and cap on buoy lines, achieving that reduction specifically through a large reduction in the number of traps allocated to fishermen or through a reduction in the number of permits issued was not analyzed despite studies that suggest that trap reductions may not substantially or over the long term reduce lobster landings and would reduce operational costs to fishermen (*e.g.,* Myers and Moore 2020; Myers *et al.,* 2007). These measures were not included in large part due to failed efforts to establish effort reduction measures with the primary fishery management body responsible for lobster fishery management, the Commission, demonstrating the complexity of developing these measures in a fishery with varied state reporting requirements. There was also strong opposition from the regulated community, most notably when Maine DMR attempted to develop this option through Maine Zone Council meetings. Strong industry opposition to measures that would require consideration of fishing histories and landings data would further extend the rule development and implementation timeline and compromise compliance.

Additionally, trap reduction would not in itself necessarily reduce buoy line numbers. Increasing the minimum number of traps per trawl would still be required in conjunction with trap reductions, otherwise fishermen could use trawls with fewer traps resulting in no decrease in vertical buoy lines. While some commenters raised concerns about additional weight associated with more traps per trawl and stronger buoy lines, weak insertions required in all buoy lines regulated under this rule would provide for breakable buoy lines. This example demonstrates the complex interrelationship of many of the measures analyzed and adopted or rejected, although given the large volume of comments not all measures provided in scoping and comments on the proposed rule were analyzed.

Where the measures considered here would also affect state fisheries, the input of state fisheries agencies was important to ensure that conservation measures were feasible and safe in the various locations in which they would apply. As such, state scoping and outreach helped inform the rulemaking, and measures given extensive consideration in the NEPA process. The FEIS reflects this extensive involvement by the numerous stakeholders and contains a reasonable range of alternatives for the agency and the public's consideration. The Alternatives were selected because, using the Decision Support Tool, they achieve or exceed a 60 percent risk reduction necessary to reduce impacts to right whales to below the PBR level of 0.8 serious injury or mortality per year.

Comment 5.14: NMFS rejected trap reductions in violation of NEPA.

Response: While agencies shall include reasonable alternatives not within the jurisdiction of the lead agency, these trap reduction strategies were not considered reasonable under the Purpose and Need due to multiple factors. They are complex, time-intensive, and carry a large administrative burden. For example, implementing a line or trap cap would require pinpointing accurate data sources, identifying qualifying criteria, outlining an allocation method, and engaging the industry, on top of managing current measures. Given the need for rapid rulemaking and conservation measures, these trap reduction strategies are not currently cost effective, nor could they be implemented in a timely manner. For more information on trap reduction strategies undertaken by the Commission, see also response to Comment 5.14, above, and comment 6.4, below.

Comment 5.15: DEIS did not analyze all risks in concluding the rule will reduce mortality and serious injury below PBR in violation of NEPA and APA.

Response: In accordance with NEPA, as part of its cumulative impacts analysis, the DEIS described impacts to right whales and other large whales from various anthropogenic sources, including vessel strikes, aquaculture, and offshore energy development. However, attribution of sources of mortality in the PBR framework is not a legal requirement of NEPA, but of the MMPA. Section 118 of the MMPA directs that NMFS develop take reduction plans to reduce the mortality and serious injury of marine mammals incidental to commercial fishing operations to levels less than PBR for the marine mammal stock. While the DEIS did address other sources of impacts on right whales, the MMPA does not mandate that take reduction plans must reduce incidental mortality and serious injury from fisheries to levels that would accommodate mortality and serious injury from other anthropogenic sources within PBR. In other words, NMFS does not apportion PBR; PBR is a reference point that serves as the short-term goal for a take reduction plans and also alerts NMFS to take management actions needed to reduce all sources of human-caused mortality so that we can meet the overarching MMPA goal of recovering marine mammals to their optimum sustainable populations.

Comment 5.16: NMFS did not consider dynamic area management as required under NEPA and APA.

Response: The commenter is correct that in the past the take reduction plan included dynamic closure measures. Such measures were found to be problematic with the fixed gear lobster fishery, and so were not considered in this final rule. When a closure is made gear cannot be removed instantaneously, and factors such as weather and sea conditions affect the timing of gear removal. Dynamic closures must allow for safety concerns, which make them less effective from a conservation perspective, as such delays can result in gear remaining after whales

are sighted, and may also result in a situation where, by the time fishermen are able to remove their gear, the whales may have already left the area subject to the closure. Further, while Canada began using dynamic closures in 2018 as part of its right whale conservation effort, in 2019 there were twelve Canadian right whale mortalities despite these measures. See Comment 9.2 under Restricted Areas and Borggaard *et al.* (2017) for further discussion of dynamic management.

Comment 5.17: Proposed rule violates MMPA and ESA because regulations are not effective and immediate.

Response: The MMPA take reduction rulemaking process is subject to procedural requirements arising from the APA, MMPA, NEPA, and ESA that make ''immediate'' protections in the form of a Take Reduction Plan amendment a legally difficult proposition. While there are circumstances in which MMPA emergency rulemaking authority may be exercised, as described in more detail in response to comment 7.5, NMFS has not concluded that this would be appropriate here, and even if this authority were used it would not allow for ''immediate'' protections, as there are other non-MMPA procedural steps that must occur. NMFS has undertaken the current rulemaking process using the best available scientific information while engaging with various stakeholders in the take reduction team process to develop effective conservation measures to reduce entanglements of right whales in Northeast lobster and Jonah crab trap/pot fisheries.

Comment 5.18: NMFS did not use the best scientific information available in violation of NEPA, MMPA, and ESA.

Response: The rulemaking process unfortunately cannot react instantaneously as new information comes to light. The MMPA take reduction planning process requires the involvement of numerous stakeholders in the TRT in the development of conservation measures, followed by the required NEPA and APA processes. At all points, however, NMFS uses the best available scientific information to inform its decisions, and when the TRT was reconvened, NMFS developed a 60–80 percent risk reduction target based on the latest PBR calculations and estimates of mortality and serious injury.

As NMFS prepared to publish the DEIS and Proposed Rule, new information regarding North Atlantic right whale population came in the form of preliminary estimates from the NMFS Northeast Fisheries Science Center in the fall of 2020. These estimates have since undergone additional review, and are being incorporated into the North Atlantic right whale stock assessment that includes a new PBR calculation, a process that includes public notice and comment. This new information is included in the FEIS.

Comment 5.19: The proposed regulation is not only unconstitutional, but a direct attack on the citizens and sovereignty of the state of Maine. You should refrain from implementing this regulation.

Response: NMFS is acting in accordance with direction from Congress under the MMPA and other applicable laws. See FEIS Chapter 10.

6. Line/Effort Reduction

At least 34 commenters were in favor of effort reduction through trap limits, line caps, and buybacks, as a way to reduce the number of vertical lines in the water, thus reducing risk to right whales, while a few were against any effort reduction measures. Maine DMR noted that the administrative burden of a line cap system is also something that has deterred them from pursuing this management measure. Several commenters pointed out that, due to latent effort, NMFS' assumptions on effort may be artificially high, though Maine's DMR stated that the latent effort calculations were consistent with their view. Some commenters suggested that fewer fishermen are entering the fishery, leading to a natural reduction in effort, and therefore line reduction was already taking place, which would contribute to the risk reduction goals of the final rule.

Comment 6.1: NMFS should review the amount of latent effort in the fishery, and ensure that latent effort is properly accounted for in determining the risk reduction value of any measures.

Response: Since the collapse of the Southern New England (SNE) lobster stock, the Commission has taken action to attempt to address latency in LMA 2 and 3. The Commission's Lobster Management Board initiated Addendum XVIII to scale the SNE fishery to the diminished size of the SNE lobster resource with a consolidation program aimed at addressing latent effort (unfished allocation) and reductions in traps fished. Addendum XVIII included an approximate 50 percent trap reduction in LMA 2 implemented over 6 years and an approximate 25 percent trap reduction in LMA 3 implemented over 5 years. These trap reductions concluded in fishing years 2020 and 2021.

Given that the Gulf of Maine/Georges Bank (GOM/GB) lobster stock (overlapping with LMA 1, 3, and the Outer Cape) is at a near time series high for abundance, we can assume that the amount of latency is comparatively lower than that found in SNE. As discussed in Chapter 5 of the FEIS, positive market and lobster stock conditions for the GOM/GB stock incentivize fishermen to increase fishing effort and may encourage inactive fishermen to reenter the fishery. For that reason, it is likely that fishermen in the Gulf of Maine have been fishing at a high capacity in recent years. Maine, which accounts for the majority of permits issued in the Gulf of Maine, submitted data on latency rates of state permits (Appendix 3.2 of the DEIS), indicating a stable number of latent permits over the last 10 years (2008–2018). Of its approximately 6,000 permits issued, approximately 1,500 permits have no reported purchased landings and are considered latent. While other jurisdictions have not completed similar analyses, latency rates are likely similar.

Given the actions to reduce latency in LMA 2 and 3, the relatively low but stable amount of latency in LMA 1, and the current fishery incentives given high abundance in the Gulf of Maine, fishery data included in the Decision Support Tool are considered accurate and representative of existing fishery conditions, including existing rates of latency. See FEIS Chapter 5 for more details.

Comment 6.2: A range of views were expressed on the Non-preferred Alternative of capping buoy lines. One comment stated that NMFS should choose its Non-preferred Alternative of capping buoy lines at 50 percent of the average monthly lines fished in Federal waters in 2017. Another expressed opposition to it, citing that Massachusetts is the only state where end lines are accurately counted or regulated, and it would be time and labor-intensive to develop such a system across the other states without funding or capacity to do so.

Response: Regulating buoy lines was analyzed in the DEIS and the FEIS as an element within the Non-preferred Alternative 3, taking an alternate approach to achieving risk reduction across the proposed areas that would reduce line numbers while allowing fishermen to respond to the reduction according to their preferences and individual operational capacity. Alternative 3 would cap the total number of lines available for trap/pot fishing in Federal waters to 50 percent of the average baseline number of lines (2017) outside of state waters. Because this was not a Preferred Alternative, the exact regulatory mechanism for

implementing a line cap was not identified. It was assumed, however, that NMFS would work with the Commission and New England states to qualify the number of buoy lines based on an April 29, 2019, control date (84 FR 43785, August 22, 2019) using vessel trip reports or, for Maine, other data sources to distribute allocations of line tags to fishermen.

NMFS did not select this Non-preferred Alternative because development of a buoy line control program would be time- and labor-intensive and come at a substantial cost to the industry. The Commission process, including soliciting public feedback, requires, at a minimum, approximately six months to develop an adaptive management action. Larger, more controversial actions can take 8 to 18 months. One commenter is likely correct that, given the lack of mandatory vessel trip reports in the Federal lobster fishery in the baseline year of 2017, the Commission would have had to rely on state data as the best scientific information available to develop a qualification program through an addendum.

Given the variable data regarding individual fishermen's lobster fishing histories due to inconsistent state and Federal reporting requirements, this would be a large and controversial action. Even once approved by the Commission, additional time would be required for NMFS to undertake a Federal rulemaking and associated analysis. The FEIS estimates that a 50 percent reduction of buoy lines in Federal waters would alone achieve an average 45 percent risk reduction in Federal waters with economic impacts ranging from $3.9 to 13.4 million. The combined set of measures included in the preferred alternative was projected to achieve a 69 percent risk reduction at a cost of $9.8 to $19.2 million in the first year of implementation. Given implementation challenges, the economic impacts of this preferred alternative and the fact that the preferred alternative achieves the stated risk reduction target, buoy line reductions will not be implemented in the final rule.

Comment 6.3: States should cap and reduce the number of licenses, and reduce risk to right whales.

Response: Through the Commission's Interstate Fishery Management Plan for American Lobster, states and NMFS have made substantial efforts at capping the number of permits and traps authorized in the lobster fishery, which serves as a primary effort control. The concept of controlling lobster fishing effort by limiting access to historical participants began in 1994 when NMFS generally limited access into the Federal lobster fishery to those who could document participation in the fishery before 1991 (59 FR 31938, June 21, 1994). Years later, in August 1999, the Commission passed Addendum 1 to Amendment 3 to the Interstate Plan, which limited access to Lobster Conservation Management Areas 3, 4, and 5 to only those who could document fishing history in those areas. Subsequent Commission addenda similarly attempt to control effort by limiting access to other Areas:

TABLE 4—ACTIONS UNDER INTERSTATE FISHERY MANAGEMENT PLAN FOR AMERICAN LOBSTER

Lobster conservation management area	Commission action [2]	Corresponding Federal action
EEZ	March 1994—Amendment 5 [3]	June 21, 1994 (59 FR 31938)
LMA 1	November 2009—Addendum XV	June 12, 2012 (77 FR 32420)
LMA 2	December 2003—Addendum IV [4]	
	February 2005—Addendum VI	April 7, 2014 (79 FR 19015)
	November 2005—Addendum VII	May 10, 2005 (70 FR 24495)
LMA 3	August 1999—Addendum 1	March 2003 (68 FR 14902)
LMA 4	August 1999—Addendum 1	March 2003 (68 FR 14902)
LMA 5	August 1999—Addendum 1	March 2003 (68 FR 14902)
LMA 6	1995—by State action	Not Applicable in Federal Waters
Outer Cape Cod	February 2002—Addendum III	April 7, 2014 (79 FR 19015)
	May 2008—Addendum XIII	
All Areas	February 2009—Addendum XII	April 7, 2014 (79 FR 19015)

The Commission has used a similar step-by-step approach in all of the areas. First, participants are qualified based upon their ability to document a history of fishing within the area. Second, those who qualify are allocated some number of traps within a given management area, based upon their ability to document the level of past fishing effort in the area.[5] These addenda have largely required that states implement similar limited access programs (with the exception of LMA 1, where recommendations were for the Federal fishery only).

The Commission Interstate Plan has not included reductions to the number of permits issued in the lobster fishery. However, since area qualifications were implemented, the number of Federal permits issued in each area has either held steady or declined. The 2020 American Lobster Benchmark Stock Assessment summarized state and Federal permits issued in the lobster fishery, with approximately 1,400 fewer permits being issued in 2018 than in 2010. Further, the Commission has approved numerous actions that reduce area-specific maximum trap caps or reduce the number of traps allocated to each permit. Most recently, Addendum XVIII required an approximate 50 percent trap reduction in LMA 2 implemented over six years and an approximate 25 percent trap reduction in LMA 3 implemented over 5 years. These trap reductions concluded in fishing years 2020 and 2021.

The Commission recommended a reduction in the LMA 3 maximum trap cap as well as ownership caps in LMA 2 and 3 that are expected to further reduce the number of traps authorized in the areas, as part of Addenda XXI and

[2] All Addenda can be found at *www.asmfc.org,* under Interstate Fisheries Management, American Lobster.

[3] New England Fishery Management Council document. This action occurred prior to the 1999 transfer of Federal lobster management to the Commission under the Atlantic Coastal Act.

[4] Addendum IV was rescinded in Addendum VI and then revised and approved in Addenda VII and XII.

[5] Through various addenda to the ISFMP for American lobster, history-based effort control plans based on fishery performance have been enacted by NMFS (LCMAs 1, 3, 4, and 5) and states (MA in Outer Cape Cod; NY and CT for LCMA 6; and MA, RI, CT, & NY for LCMA 2).

XXII. NMFS is in rulemaking to consider the implementation of these measures. This FEIS anticipates this future rulemaking and has given credit to the risk reductions associated with Addenda XVIII, XXI, and XXII.

Comment 6.4: NMFS should remove half the traps from the water, which would reduce the risk to right whales while still allowing fishermen to make a living.

Response: Since 1994 under the Commission's Interstate Fishery Management Plan for American Lobster, states and NMFS have made substantial efforts at capping the number of permits and traps authorized in the lobster fishery. Participation caps serve as a primary effort control. Reducing trap caps by half could result in less effort and, when paired with traps/trawl requirements, could reduce the number of lines being fished, with an associated reduction in risk to large whales. A number of fisheries and managers that have participated in the public meetings of the Commission and the Take Reduction Team have expressed confidence that, on productive fishing grounds, lobster trap reductions could occur without negative economic consequences. A number of studies have demonstrated this, see for examples Myers and Moore (2020), Myers *et al.* (2007), and Acheson (2013).

However, for a reduction in the number of actively fished buoy lines to be fairly distributed based on vessel fishing histories or other commonly used metrics, detailed knowledge of the amount of fishing effort by sector or individual vessel is required. Allocation decisions in effort control management of a capped resource (lines or traps) are also usually informed by iterative public fishery management processes and include appeal options that are administratively burdensome. Because the lobster fishery has variable reporting requirements across states, and because only about 10 percent of Maine fishermen have been required to report in any year and Federal reporting has been variable, data to easily determine effective trap and line cap measures is not available. This was demonstrated by the failed attempt of the Commission to identify an effort limit addendum, as described in FEIS Section 3.1.1.2.

7. Management

We received thousands of comments on management issues, ranging from the use of adaptive management strategies to including southeastern states in future rulemaking to evaluating the effectiveness of the final rule. Thousands of commenters, primarily through campaigns organized by NGOs, but also at least 149 unique commenters, advocated NMFS taking emergency action to institute immediate vertical line reductions or closed areas, and of them, many suggested shutting down all fishing activities that involve vertical lines. Several also recommended shutting down all commercial fishing. We also received thousands of comments, again primarily through campaigns organized by NGOs, but also from 83 unique commenters, about our risk reduction calculations being based on outdated population estimates.

Comment 7.1: NMFS should use adaptive management to assess and recalibrate the measures every few years to reach goals of reduced entanglements in fishing gear.

Response: During the ESA Section 7 consultation on the operation of eight fisheries managed under Federal fishery management plans and two fisheries managed under interstate fisheries management plans, NMFS identified the need for additional measures to meet the mandates of the ESA, and developed a Conservation Framework to outline the agency's commitment to implement measures necessary for the recovery of right whales. In addition to the current rulemaking that seeks to reduce risk of mortality and serious injury by 60 percent, the Conservation Framework provides for additional rulemakings to further reduce risk over the next decade at levels expected to lead to survival and recovery of the species. Central to the Conservation Framework is an adaptive management approach by which new information relating to the status of right whales and the impacts of fisheries and non-fisheries activities will be used to determine the extent of additional management measures needed.

Comment 7.2: NMFS should establish another process through which stakeholders can propose measures that could achieve equal or greater protections for right whales. The ALWTRP process is time-consuming, and does not allow for flexibility and adaptability.

Response: The MMPA requires NMFS to convene Take Reduction Teams and develop Take Reduction Plans. While this process can be time consuming, it provides a framework for developing mitigation measures and clear goals for the ALWTRP. The ALWTRT has the discretion to recommend mitigation measures that are flexible and adaptable in meeting the MMPA goals.

Comment 7.3: NMFS should include southeastern states in any future rulemakings, since right whales spend time in the southeast.

Response: To simplify and expedite rulemaking, NMFS chose to direct the ALWTRT efforts initially on the Northeast Region lobster and Jonah crab trap/pot fisheries because these fisheries constitute 93 percent of the U.S. buoy lines in areas where right whales occur. The Team includes southeastern state fishery managers as well as members that represent the South Atlantic Fishery Management Council and Southeast U.S. fishermen. NMFS has begun working with the ALWTRT to get their recommendations on further rulemaking that may include modifications to the southeastern fisheries that are subject to the ALWTRP. We will include outreach to stakeholders in these states in our future rulemaking efforts.

Comment 7.4: NMFS should enlist fishermen in disentanglement efforts, rather than relying on college students and other groups.

Response: Disentanglement efforts on large whales are conducted under a NMFS permit by highly skilled and trained responders throughout the United States. These responders come from a variety of backgrounds, including fishermen, and NMFS regularly conducts training that specifically targets fishermen and other members of the on-water community. Disentanglement techniques, tools, and protocols have been developed over decades and have been used as a model for successful rescues and international disentanglement efforts. National and international trainees come from all over the world to learn from and train with our teams in the United States. We do ask for assistance from untrained fishermen from time to time on specific cases, and will continue to do so to provide an effective disentanglement effort that is safe for both the disentanglement team and the whales.

Comment 7.5: NMFS should take emergency action to close all fisheries that use vertical lines or other gear that may entangle right whales, or to close all areas where whales may co-occur with fishing.

Response: There are several statutes that lay out the situations in which NMFS can take emergency action. In Section 118(g) of the MMPA, which many commenters mentioned, the Secretary of Commerce may implement emergency rules when incidental take from commercial fisheries are having ''an immediate and significant adverse impact on a stock or species.'' Where there is already a take reduction plan in place, the Secretary should develop such emergency rules that are consistent with the plan to the maximum extent practicable, and follow ''on an

expedited basis'' with amendments to the plan as recommended by the TRT to address the situation. In developing emergency rules, the Secretary must consult with the Marine Mammal Commission, TRT, fishery management councils, and state fishery managers. Emergency rules can only stay in place for 180 days, but can be extended for additional 90 days if an emergency situation persists.

Section 4(b)(7) of the ESA also includes emergency rulemaking authority provisions. NMFS has used this authority in the past to implement emergency rules for right whale protections (*e.g.,* SERO 2006 gillnet closure, 71 FR 66469, Nov. 15, 2006). This authority is available when there is an ''emergency posing a significant risk to the well-being of any species of fish or wildlife or plants.'' In an ESA emergency rulemaking, the Secretary must provide detailed reasons why the regulation is necessary, and must provide actual notice to state agencies in states where species occur. An ESA emergency rule can only last 240 days.

While ESA emergency rulemaking provisions explicitly waive the procedural rulemaking requirements of the APA and the ESA, likewise, the MMPA's emergency rulemaking authority provides an alternative to the normal rulemaking process of the MMPA, which would ordinarily include the APA's notice and comment requirements. These MMPA emergency provisions do not, however, waive other procedural requirements that agencies are subject to when undertaking a rulemaking, including NEPA, the Paperwork Reduction Act (PRA), or E.O. 12866. The NEPA regulations at 40 CFR 1506.12, for example, allow agencies to consult with the Council on Environmental Quality to develop ''alternative provisions'' in addressing an emergency situation, but agencies are expected to ''limit such arrangements to actions necessary to control the immediate impacts of the emergency.'' E.O. 12866 provides that in an emergency situation, ''the agency shall notify the Office of Information and Regulatory Affairs (OIRA) as soon as possible and, to the extent practicable, comply with subsections (a)(3)(B) and (C) of this section.'' The PRA includes emergency review provisions, subject to approval by the Office of Management and Budget (OMB) with a finding that the normal process will result in public harm or is not possible because of an unanticipated event, and even then the agency must take all practicable steps to consult with members of the public. To the extent that an emergency action would impact a wide range of the fishing community, the need to satisfy these procedural requirements would limit the speed of such actions.

Due to the above-referenced requirements for emergency action under the MMPA and ESA, including public notice and comment requirements NEPA, PRA, or E.O. 12866, and the limitations on how long an emergency rule can stay in effect (270 for MMPA, 240 days for ESA), NMFS believes that proceeding with the current action will provide the fastest relief and longest-lasting protections for right whales. NMFS generally views emergency actions to be appropriate where a clearly identifiable problem can be addressed with directed, focused measures, and such measures will effectively address the emergency in the timeframes to which such authorities are limited. Because it is difficult to predict where entanglements will occur given the relative scarcity of identified locations of entanglement, an emergency action to completely close all fisheries using vertical lines at this time would appear to be an overbroad use of its emergency authority. NMFS has not identified a geographic location or discrete temporal period within which emergency action would address a specific entanglement concern, and therefore NMFS believes that the complex issues associated with right whale fishery interactions are better addressed through the comprehensive approach in the final rule.

Comment 7.6: NMFS should take emergency action to immediately implement a year-round closure south of Martha's Vineyard and Nantucket.

Response: As noted in the response to Comment 7.5, we believe that the final rule will provide the fastest relief and longest-lasting protections for right whales, so we are not planning to take emergency action at this time. The final rule does include a seasonal closure south of Martha's Vineyard and Nantucket that will be in effect from February to April, when right whales have been sighted most frequently in high numbers in this area.

We have selected the larger of the closed areas analyzed as a restricted area in Alternative 3 (Non-preferred) in the DEIS, but is in the Preferred Alternative in the FEIS and is being implemented in the final rule. This larger restricted area was best supported by the most recent sightings data. Since 2018, right whales have been documented to the west of the originally proposed closure, such that the closure could relocate lines into areas of equally high whale density during the restricted season. The Preferred Alternative in the FEIS and final rule area encompasses the majority of the area where the highest density of right whales have been sighted, and the most recent sightings in years not yet within the Decision Support Tool demonstrate these aggregations have persisted. Restricting buoy lines within this area between February and April provides an estimated 4.6 percent risk reduction for the entire Northeast and captures much of the risk within that area. See FEIS Section 3.1.2.5 for our revised analysis.

Comment 7.7: NMFS should take emergency action to immediately implement seasonal closures in the three areas in the Gulf of Maine: Downeast summer closure from August 1–October 31, a western Gulf of Maine spring closure from May 1 to July 31, and an offshore migration closure from October 1 to April 30.

Response: As noted above, we believe that the final rule will provide the fastest relief and longest-lasting protections for right whales, so we are not planning to take emergency action at this time. NMFS analyzed the closure areas in the three Gulf of Maine areas proposed in an emergency rulemaking petition submitted by The Pew Charitable Trusts. Along with the year-round closure proposed in Southern New England, these four areas would achieve an estimated 12.6 percent risk reduction according to Decision Support Tool Version 3, using the updated right whale habitat density model (2010–2018). However, the team working on the current rule would have to divert to preparing a new emergency rule and the required NEPA analyses. As noted above, emergency measures may only be implemented within the limited timeframe provided by the statutory authority, and the approximate 67 percent risk reduction from the current rule far exceeds the estimated risk reduction suggested by the commenters. The final rule is a priority in order to implement broad risk reduction in a timely manner. See FEIS Section 3.4 for a further discussion of this and other alternatives that were considered but rejected.

Comment 7.8: NMFS should issue emergency regulations that remove vertical buoy lines from the water in areas of high entanglement risk to North Atlantic right whales.

Response: As noted above, NMFS would typically use its emergency authority in situations where a clearly defined problem can be addressed using discrete measures in a defined geographical area to effectively provide conservation protections within the limited timeframe provided by the statutory authority. Because the location of entanglements are so rarely observed,

it is difficult to pinpoint times and places where emergency measures might provide effective protections from entanglements. NMFS has not currently identified new areas where emergency regulations would be appropriate, but the final rule includes comprehensive measures that address entanglements on a broad scale, including measures that will reduce vertical buoy lines through trawling up and seasonal area closures. See FEIS Chapter 3.

Comment 7.9: How will the regulations in this final rule be evaluated?

Response: NMFS anticipates annual meetings of the Team to review the North Atlantic right whale and other large whale distribution and abundance data, mortality and serious injury data, retrieved entanglement gear analyses, fishing effort data, and other relevant research results. As they become available, these new data will also inform the evolving Decision Support Tool. Modifications to seasonal restricted areas will be considered annually by the Team, and they may make recommendations to amend the Plan, as needed. Following the recommendations of the NMFS Expert Working Group asked to review right whale surveillance and monitoring programs (Oleson *et al.* 2020), we anticipate a three-year surveillance and review cycle, providing additional opportunities to evaluate right whale distribution data to gauge seasonal restricted areas and other conservation measures contained in the ALWTRP.

Comment 7.10: NMFS should evaluate the success of past regulations, like sinking groundlines and breakaways, before adding more regulations.

Response: Under Section 610 of the Regulatory Flexibility Act, NMFS is required to review any significant rule to evaluate the continued need for regulation. To allow for sufficient time for economic adjustments to occur and for data to become available, we review rules every 7 years. The most recent ALWTRP rule was published in 2015, and will be coming up for review shortly.

Comment 7.11: Several commenters suggested that NMFS ban commercial fishing, ban certain commercial fishing gears, or focus on reducing the demand for seafood.

Response: MSA is the primary law that governs marine fisheries management in U.S. Federal waters. First passed in 1976, the MSA fosters the long-term biological and economic sustainability of marine fisheries. Its objectives include preventing overfishing, rebuilding overfished stocks, increasing long-term economic and social benefits and ensuring a safe and sustainable supply of seafood. The Atlantic Coastal Fisheries Cooperative Management Act, governing the U.S. lobster and Jonah crab trap/pot fisheries, directs the Federal government to support the management efforts of the Commission and, to the extent the Federal government seeks to regulate a Commission species, develop regulations that are compatible with the Commission's Interstate Fishery Management Plan and consistent with the MSA's National Standards. Regulations to seasonally close areas to fishing or to fishing with certain gear types have been implemented to comply with the MMPA, the ESA, and even the Magnuson-Stevens Act. However, a complete ban on commercial fishing or closure of an entire fishing sector when other options exist that allow fishing to occur while complying with the Acts would be inconsistent with our mandates under these laws.

Comment 7.12: NMFS should require all vessels in fixed-gear fisheries to use Vessel Monitoring Systems and/or AIS, submit Vessel Trip Reports, and have observer coverage in order to get better information on distribution and density of vertical lines.

Response: NMFS supports the collection of high resolution spatial data in the lobster fishery. The Commission recommended the collection of mandatory harvester reports in the Federal fishery, as part of Addendum XXVI to Amendment 3 to the Interstate Fishery Management Plan for American Lobster. NMFS is in rulemaking to develop harvester reporting requirements that complement the Commission's Interstate Plan for lobster. NMFS intends to work with the Commission, through a technical working group, to develop additional high resolution spatial data collection objectives and requirements, while balancing the financial burden to industry.

Comment 7.13: If the lobster/Jonah crab trap/pot fishery had been managed like the Northeast Multispecies fishery, there would be fewer offshore fishing permits, and we wouldn't be having this problem.

Response: The interaction risk of a protected species is largely associated with the gear type, but also the quantity of gear in the water, gear soak/tow duration, and the temporal and spatial overlap of the gear and a given protected species. For the critically endangered North Atlantic right whale, fixed gear fisheries with lines linking gear on the ocean floor to surface marking systems (buoys, etc.) pose the greatest risk as they have accounted for the majority of identifiable past fishery interactions. The DEIS indicated that the 2017 IEC model estimated that over 93 percent of fixed gear buoy lines within right whale habitats along the Northeast U.S. Atlantic coast are fished by the lobster and Jonah crab fishery. Thus, the lobster and Jonah crab fishery poses the greatest risk to right whales and has been the focus of this action. For comparison, the Northeast multispecies fishery authorizes the use of fixed gear (*e.g.,* gillnets), however, it is a relatively small component of the fishery and one of several fisheries comprising the other 7 percent of fixed gear fisheries with buoy lines.

The MSA, governing the Northeast Multispecies Fishery Management Plan, and the Atlantic Coastal Act (ACA), governing the Interstate Fishery Management Plan for American Lobster, are the primary laws governing marine fisheries management in U.S. Federal waters. First passed in 1976, the MSA fosters the long-term biological and economic sustainability of marine fisheries. Its objectives include preventing overfishing, rebuilding overfished stocks, increasing long-term economic and social benefits, and ensuring a safe and sustainable supply of seafood. The ACA directs the Federal government to support the management efforts of the Commission and, to the extent the Federal government seeks to regulate a Commission species, develop regulations that are compatible with the Commission's Interstate Fishery Management Plan and consistent with the MSA. These laws allow for the updating of management measures to meet legislative and management objectives. While adjustments to management measures may affect the quantity of gear fished, soak time or tow duration, or the spatial or temporal usage of gear, and, thus, may alter the interaction risk associated with any fishery to protected species, they are unlikely to dramatically alter the gear usage in these fisheries.

Comment 7.14: These rules will create safety hazards for fishermen, and will not reduce right whale entanglements or mortalities.

Response: We acknowledge that open ocean fishing is inherently dangerous, and that fishing is one of the most dangerous occupations. Fishermen configure their operations in the ways that work best for them, and any regulatory changes that require them to modify their practices can increase risk until adaptations to the new practices are made. Although some commenters have criticized the deference that NMFS gave to the states and offshore fishery

members in developing the Proposed Rule analyzed in the DEIS, the extensive outreach to fishermen informed the development of measures included in the final rule. Fishermen informed measures with important information such as number of traps that can fit safely on deck at one time, amount of force on rope hauled under commercial fishing practices, rope size that fits safely through blocks and haulers on commercial vessels, sizes of vessels and crews fishing at various distances from shore, local fishing conditions, and conservation equivalencies.

Alternative 2 (Preferred) of the FEIS and the final rule consider those public comments, including many of the conservation equivalencies requested, and accommodate those changes along with measures from the Proposed Rule that benefitted from earlier scoping. Together, these measures should prevent this rulemaking from introducing hazards beyond those that already exist in the lobster and Jonah crab fisheries.

Comment 7.15: NMFS should also evaluate the effects of these regulations on all the other large whale species in the region.

Response: Chapter 5 of the FEIS evaluates the effects of the final rule on large whales, other protected species, and habitat.

Comment 7.16: Thousands of commenters were concerned that cryptic mortality and uncertainty in the data was not taken into account when choosing the risk reduction target, and recommended an 80 percent risk reduction target or higher, with a few suggesting 100 percent.

Response: The application of cryptic mortality estimates in determining annual entanglement mortality and serious injury rates relative to the PBR level was a new concept when first introduced to the ALWTRT in 2019. Peer review of the cryptic mortality estimate had not yet been completed and although it was discussed in the 2018 Marine Mammal Stock Assessment Report (Hayes *et al.* 2019) that was available to the Team for the April 2019 meeting, cryptic mortality was not incorporated into the entanglement related mortality and serious injury estimates in that report. The 60 percent target based on documented mortality was in itself seen as a difficult challenge for the Team given uncertainties about the location of origin of most documented entanglement events. The 80 percent target was an initial attempt to account for early estimates of cryptic mortality, but was even more daunting and the Team recognized the uncertainty in that higher target given the many unknowns related to the unseen mortalities, including cause and location of deaths. Therefore, while the Team accepted the challenges of a 60 percent mortality and serious injury risk reduction, they were unable to agree on the higher target. The recent paper by Pace *et al.* 2021 on cryptic mortality and the more recent analysis in the current population estimate (Pace 2021) now provide more support for the 80 percent target than at the time the ALWTRT undertook its efforts to develop recommendations. Our understanding of cryptic mortality will affect management decisions going forward as new stock assessments and PBR calculations incorporate this new science.

Here, NMFS considered this new information, as well as the remaining uncertainty around apportioning mortalities to country and source, conservation equivalency recommendations from states and stakeholders, and the need for urgency in completing the current rulemaking constraining us to the scope of the analyses in the DEIS. Resulting modifications to the final rule included selection of a larger area closure south of the islands and modifications to management measures that improved risk reduction estimates to achieve a nearly 70 percent risk reduction as determined by the Decision Support Tool. Further efforts by NMFS to estimate serious injury and mortality and to apportion the estimates to country and mortality source will be included in guidance to the ALWTRT to support their development of recommendations for further amendments to the ALWTRP.

Comment 7.17: NMFS should focus risk reduction efforts on areas of high right whale occurrence.

Response: Chapter 3 in the FEIS describes how the alternatives were developed and explains that while precautionary measures are required throughout the regulated areas, more restrictive and protective measures are focused on areas of high right whale co-occurrence with buoy lines (*e.g.,* the hotspot analysis that identified restricted areas). Particularly, the months and areas with highest whale occurrence and co-occurrence are the areas that were selected for seasonal restricted areas. However, as described in Chapters 2, 3, and 8 of the FEIS, there is also a great need to implement measures that will be resilient to changes in whale distribution and therefore requires broader precautionary risk reduction across the regulated area.

Comment 7.18: Pending fishery management measures should not be counted in analyzing risk reduction.

Response: Noted in the ALWTRT recommendations and throughout the development of this rule, other relevant actions that we considered to be reasonably certain to occur within the timeframe evaluated within this rule were treated as such in our analysis of anticipated risk reduction throughout the regulated area. We commit to monitoring the progress of these related actions and reporting our findings to the ALWTRT at future meetings for consideration.

Comment 7.19: Massachusetts did not ban single traps on vessels longer than 29 feet in their rule, so how was that risk reduction re-allocated?

Response: During the development of the Proposed Rule, NMFS discussed this measure with the Massachusetts Department of Marine Fisheries and recognized that it was likely to be positive toward risk reduction. However, we were unable to estimate the impacts on risk. Since we did not assign any quantified risk reduction to that measure in the DEIS, there was no need to re-allocate it.

Comment 7.20: NMFS should adopt Maine's proposed conservation equivalencies.

Response: As discussed in FEIS Section 3.3, NMFS is adopting most of the conservation equivalencies offered by Maine out to 12 nm, and is appreciative of the work done by Maine Department of Marine Resources and the Zone Councils to develop and recommend weak insertion and trawling up requirements in collaboration with Zone Councils that are familiar with capacity and constraints of Zone-specific fishing operations and conditions.

Comment 7.21: Maine should get gear reduction credit if Maine funds tags or development of a GPS tracker.

Response: Technology and tracking in and of themselves do not reduce the risk of fishing gear on large whales. However, if Maine develops a line reduction program and reporting/tracking technology that demonstrates line reduction, it would be considered toward risk reduction.

Comment 7.22: In LMA 3, NMFS should analyze the difference in risk reduction between a 50 percent reduction in buoy lines and the proposed closure with potential gear displacement.

Response: Several scenarios were analyzed in Georges Basin Restricted Area for the DEIS and FEIS, including a 50 percent reduction in lines through a line cap or through trawling up and a

restricted area. The FEIS includes longer trawl lengths in this area compared to the DEIS (50 traps per trawl versus 45 traps per trawl) but still implements broader trawling up measures throughout LMA 3 in order to distribute risk reduction more evenly. The Georges Basin Restricted Area was predicted to increase co-occurrence in the DEIS (See co-occurrence maps in Chapter 5 and Appendix 5.2).

Comment 7.23: How is the Massachusetts Restricted Area credit being added to the risk reduction estimates?

Response: FEIS Section 3.3.5.1 discusses credit assigned to the Massachusetts Restricted Area and provides an assessment of risk reduction with and without application of the value of that area. The Team unanimously supported including credit for the Massachusetts Restricted Area, which was fully implemented in its current configuration in 2015 (79 FR 36585), given recent years' increased use of that area by right whales (*e.g.,* Ganley *et al.* 2019).

Comment 7.24: Were all the proposals evaluated using the same model?

Response: Each individual risk reduction measure and suite of measures were run through the Decision Support Tool (DST) Version 3 to identify the estimated contribution to risk reduction across the Northeast Region as defined by the Northeast Trap/Pot Management Area.

Comment 7.25: The Woods Hole Oceanographic Institute has developed a methodology in collaboration with the fishing industry to attribute risk to gear based on proportion of water column occupied. This information must be considered in this rulemaking.

Response: We anticipate adding this information to the DST in the near future. However, this is less important for the current rulemaking because an endline, assuming it approximates a straight line from the bottom to the surface, occupies all portions of the water column equally and the lobster industry has incorporated sinking groundline so groundlines may be assumed to have negligible presence in the water column. Incorporating proportions of the water column occupied are more critical for complex structures like gillnets or potential aquaculture installations, in which case it is important to model not only the proportion of water column occupied but also which portion of the water column is occupied and the vertical distribution of whales. This will be incorporated into the DST for future analysis of risk posed by different gear types that do not use the entire water column.

Comment 7.26: Some commenters questioned the validity of the threat component of the DST.

Response: The threat model based on the TRT opinion poll is no longer in use. Starting with the CIE review in 2019, the threat model has been based only on the analysis of empirical data on rope breaking strengths, rope samples retrieved from entangled whales, and whale spatial distributions. At this time, the model is unfortunately constrained to rope breaking strength but in two years of polling scientists and stakeholders, nobody has proposed a viable alternative. It is appropriate for the threat model to be equally weighted with line and whale density because entanglement risk only exists when lines are present, whales are present, and the lines pose a risk to whales. If any of these three factors are not present, the risk of entanglement is zero.

Comment 7.27: The DST is critically flawed in its reliance on an estimate of gear threat that significantly overemphasizes the contribution of rope strength to entanglement risk. By failing to account for the uncertainty inherent in the DST, NMFS overestimated the effectiveness of the selected methods for reducing risks to right whales.

Response: There are uncertainties in the DST calculations that we have not fully quantified. However, it is important to distinguish between uncertainty and bias and we have no reason to believe that the inputs and therefore model outputs are particularly biased high or low. Thus, while there is unquantified uncertainty around the risk reduction calculated by the DST, it is equally likely that actual risk reduction is higher than estimated as lower than estimated and no reason to believe that risk reductions are overestimated.

Comment 7.28: NMFS should implement these regulations as soon as possible as any delays come at the expense of right whales.

Response: NMFS recognizes the urgency of the current situation and intends to implement these regulations to provide needed conservation benefits to right whales as soon as possible. We intend to implement new seasonal restricted areas 30 days after the rule is finalized. Massachusetts Restricted Area fishermen have indicated that it takes several trips for them to remove all of their gear, and because of unpredictable winter weather and holidays, they remove and move beginning at least a month in advance of their February 1 closure. The LMA 1 closure will likely result in moved trawls rather than trawls brought to the beach and stored on land so may not require round-trips to the dock. Many fishermen moving gear from the South Island Restricted Area would be expected to remove gear prior to the February 1 closure; one month should provide sufficient time to remove gear. Gear configuration changes including trawling up, weak buoy lines or weak insertion installation, and gear marking, will be delayed for a longer period of time because these buoy and groundline modifications will take substantial time. The delayed effective date will factor in winter or low effort months when many fishermen have removed gear from the water for maintenance. The actual effective dates will depend on when the Notice of Availability of the FEIS and the final rule are released. Our intention is that all measures will be in place for the next fishing year starting in the spring of 2022.

Comment 7.29: Some components of the rule state prohibitions ''to fish with, set, or possess'' where other portions leave out ''set.'' If this was strategic, please clarify how ''setting'' is separate from the regulatory intent of ''to fish with.

Response: This was carryover language from the existing regulations. The word ''set'' is included within seasonal restricted areas; seasons when gear must be removed unless fishing without buoy lines. During the season that the gear can be fished with gear configuration requirements referenced in the regulations, the word ''set'' is not included.

Comment 7.30: It is our understanding that any trap, pot, contrivance etc. that is capable of catching a lobster is required to have a valid lobster trap tag affixed to it. This would indicate that any trap which falls into this category is subject to the marking, weak insert, and trawling up requirements of this rule. We would ask for clarification on this assumption from NOAA, which should help to guide discussions in the next ALWTRT process which will be aimed at the additional gear types of gill nets and fish pots.

Response: Any trap/pot within the Northeast Trap/Pot Management Region with a lobster trap tag will be required to comply with the marking, weak insert, weak line, and trawl length requirements.

Comment 7.31: While some of these proposals may end up being effective, this proposal makes very clear that there is insufficient mortality and tracking data on right whales, and many of the suggested changes will be considerably

more detrimental to the fishing industry than beneficial to the whales.

Response: The Decision Support Tool estimates at least a 60 percent reduction in entanglement risk, which is spread across the region to remain resilient to changes in right whale distribution. The population and distribution are frequently monitored via aerial/vessel surveys as well as with acoustic detection, and will be evaluated to ensure the measures are targeting areas where entanglement risk exists. See more about monitoring in response to Comment 9.10.

Comment 7.32: The proposed rule does not consider reduction in effort, particularly for recreational fisheries. PEER urges NOAA to consider the effect of reducing or eliminating recreational fisheries in right whale habitat.

Response: The ALWTRP only regulates Category I and II commercial fixed gear fisheries identified in the Plan. Additional regulation of recreational fisheries is outside the scope of the current rulemaking.

8. Research

Comments on research generally fell into one of three categories: Whale distribution, insufficiency of current data, and entanglements. Many of the fishermen commenting said they had either never seen a right whale where they fish, never seen or heard of an entangled right whale in areas where they fish, did not believe that there was any recent evidence of entanglement in their trap/pot lines, and questioned the validity of the scientific models on whale distribution.

Comment 8.1: NMFS has not shown that entanglement in lobster trap/pot gear contributes to low birth rates.

Response: There is a wealth of research that demonstrates that stressors, including entanglements in fishing gear like traps/pots, have effects on marine mammal health and reproduction. Entanglements in fishing line, such as those used in the lobster trap/pot fishery, is energetically costly for right whales and requires expenditure of a portion of their energy budget that would otherwise be allocated to reproduction (van der Hoop *et al.* 2017a). Entanglements can reduce overall whale health and increase calving intervals (Rolland *et al.* 2016, Moore *et al.* 2021). Entanglements that restrict feeding further impact energetic reserves and ability to feed (van der Hoop *et al.* 2017b). An inability to get enough food is also an important factor in the reproductive health of right whales (Meyer-Gutbrod *et al.* 2015). See FEIS Chapters 5 and 8.

Comment 8.2: Healthy whales don't get entangled in fishing gear; there is something else wrong with them.

Response: Several commenters stated the belief that healthy whales do not get entangled in fishing gear. Entanglement in fishing gear is a global problem that has been documented for many whale and dolphin species. In the Northeast Region, humpback and minke whale entanglements are not uncommon. More than 85 percent of North Atlantic right whales have experienced entanglement in fishing gear, many more than once. A recent assessment of all right whale photos reveals that entanglement scarring injuries have increased, with roughly more than 30 percent of the population having at least minor entanglements each year. Much of the population has been entangled multiple times, and there is a more than 90 percent chance that a healthy female will get entangled between each calving cycle potentially contributing to reduced calving rates. Repeated and chronic entanglement affects whale health and some whales with unrelated compromised health status may be more vulnerable to injury and death. However, there is no evidence that healthy whales are more adept at avoiding entanglement.

Comment 8.3: NMFS should hire mechanical engineers to examine the rope and net configurations that are causing entanglements to occur.

Response: NMFS conducts extensive analysis of recovered gear from entangled whales using our gear team, which includes former and active fishermen. We also regularly consult with active fishermen who have decades of experience and are well versed in various fishing methods and local practices. The various configurations we have seen over decades of recorded entanglements varies widely, but the basic fact is that rope or net in the water column has the potential to entangle large whales. NMFS also funds bycatch reduction research, and considers research by right whale scientists that include modeling of entanglement configurations. NMFS does not believe that hiring mechanical engineers is necessary.

Comment 8.4: NMFS should develop a plan to monitor all whale entanglements, including observer coverage and satellite monitoring.

Response: NMFS, state, and independent research organizations coordinate monitoring whale entanglements. Monitoring of entangled whales is done through comprehensive survey effort to resight individuals and check for entangling gear or scarring. Satellite position beacons are sometimes attached to gear entangling a whale to facilitate finding the whale for a disentanglement effort. Because whale entanglement incidents are rare relative to fishing effort hours and whales typically carry gear away from incident sites before a vessel returns to the gear, an observer program is not an effective means for large whale entanglement monitoring.

Comment 8.5: How can NMFS justify a seasonal restricted area if there have been no confirmed entanglements in that area in over a decade? No North Atlantic right whales have been entangled in gear attributable to Maine trap/pot gear in at least 15 years, because the whales no longer are in Maine waters.

Response: No gear remains on most right whales that bear entanglement scars. In the cases where gear does remain, it is rarely collected, and even more rarely has any identifying marks. Between 1980 and 2016, the New England Aquarium analyzed 1,462 right whale entanglement interactions (A. Knowlton pers comm). Only 110 of these incidents had gear still attached, and in only 13 cases could that gear be traced to the original set location. Because we lack information on exactly where interactions occur, we use areas of high co-occurrence of right whales and fishing gear as a proxy for identifying areas of high entanglement potential. The Decision Support Tool also considers the type of gear in determining the risk of a serious entanglement that would cause mortality or serious injury. The seasonal restricted areas identified in the final rule are based on hot spots, areas with high current and historic habitat use by North Atlantic right whales, high fishing gear density and high configuration threat. The population and distribution are monitored via aerial/vessel surveys as well as with acoustic detection, and will be evaluated to ensure the restricted areas are effective. See more about evaluation below in response to Comment 9.10.

Until September 2020, when Maine required gear marking in exempted waters, most Maine lobster fishery buoy lines were unmarked. Therefore, if a buoy line fished by a vessel operating under a Maine permit entangled a right whale, the odds of tracing that rope to a Maine lobster fishery buoy line have been extremely low. The commenters are correct that no rope retrieved from a right whale has been specifically traced to gear set by Maine trap/pot fishermen since the 2000s. However, cases in 2011 and 2012 were identified as U.S. unknown trap/pot gear with red ALWTRP marks, consistent with the

marking scheme for Maine fishermen outside of exempted waters during those years. Additionally, a number of anchored minke whales and humpback whales have been identified in Maine gear in the past 15 years. Maine lobster buoy lines entangle and kill whales.

As noted by the commenters, right whale distribution has changed in the past decade, and there may be fewer or less dense aggregations of whales in the Gulf of Maine. Right whales continue to occur in Maine waters; however, and given the endangered status of the population, the high rate of entanglements evidenced by scars on right whales, and the continued mortality and serious injuries above PBR, NMFS must provide protective measures throughout the population's range in U.S. waters.

Comment 8.6: One commenter indicated that the data shows that gillnet and netting gear were the most prevalent gear (other than Canadian snow crab gear) and the Northeast lobster fishery were the least prevalent in right whale entanglements.

Response: As detailed in Chapter 2, while gillnet gear may be identified at rates higher than anticipated given the relative number of buoy lines, there are more cases identified as trap/pot found on right whales than identified gillnet gear and the most prevalent gear seen on right whales is described as unknown rope.

Comment 8.7: The Decision Support Tool relies on coarse data for both line density and whale density, and should not be used. There is no way to model where the whales are and where the gear is with any degree of certainty.

Response: The Decision Support Tool (DST) was and continues to be the best available analytical tool to assess the co-occurring risk of large whale entanglement in commercial fixed gear. The model compiles the best available large whale habitat density modeling by Roberts *et al.* (2016) which incorporates data from nearly every systematic marine mammal survey of the eastern United States. The DST also draws from every available state and Federal fisheries data source to incorporate the best available estimate of the distribution of fixed gear fisheries vertical lines within the Exclusive Economic Zone. We agree that there are uncertainties associated with this model, and any model, but we are confident in the DST's ability to inform the Team's discussion and recommendations toward a risk reduction goal.

Comment 8.8: NMFS right whale population model overestimates the cumulative mortalities.

Response: The estimates of total mortality are derived from a peer-reviewed methodology designed to estimate the abundance of North Atlantic right whales. The model itself is a version of methodology used for many species of wildlife in which particular statistical characterizations are used to characterize the capture and/or resighting (both alive and dead) histories of individually marked whales to estimate survival rates. These models take into account that individuals are not seen every year, and this particular model allows individuals to have different probability of being ''captured'' on each capture occasion.

It is true that these models cannot distinguish between true mortality and the appearance of mortality that would come from an individual permanently leaving the survey areas. For that to happen in great abundance would suggest that many whales use the United States and Canadian coasts for enough time to become catalogued and then decide to move elsewhere and never return. There is simply no evidence for that scenario. Indeed, there is abundant evidence that the great mobility and long life of right whales allows them to take modest sojourns to Icelandic and even Norwegian waters and return to the survey areas to be ''recaptured'' once again.

Very few wildlife populations even approach having all mortality documented by detected carcasses. Despite the vast survey effort directed at right whales, given the large amount of area that right whales travel, right whales and other large whales likely die without their carcasses ever being seen.

Comment 8.9: NMFS should use a longer time series to make any determinations, as well as acoustic and prey data.

Response: The FEIS is a compilation of the best available scientific information including information on documented and projected changes in prey distribution. Acoustic data are increasingly used to identify right whale distribution and are included in the near real-time sightings posted on our website at *fisheries.noaa.gov/resource/map/north-atlantic-right-whale-sightings,* and passive acoustic monitoring research is available at *apps-nefsc.fisheries.noaa.gov/pacm/#/narw.* For a complete list of citations, see the list of references included at the end of every FEIS chapter.

Recent population models demonstrate that the right whale population decline began in 2010 and accelerated around 2015 (Pace *et al.* 2021). We cannot wait another decade to respond to that decline.

Comment 8.10: Thousands of commenters who submitted comments as part of a campaign noted that the Proposed Rule relied on outdated population estimates to calculate PBR, and requested that the calculations be updated and a new PBR determined.

Response: The calculations in the DEIS showing how NMFS proposed to achieve that risk reduction relied on the 2018 Stock Assessment report available when the DEIS was drafted, using 2016 population estimates. The FEIS has been updated with the most recent population estimate (Pace *et al.* 2021) and stock assessment data (Hayes *et al.* 2020), including the PBR of 0.8, down from 0.9 in the DEIS. For more, see FEIS Section 2.1.1.

Comment 8.11: NMFS should use peer-reviewed science before implementing any regulations.

Response: NMFS concurs. The FEIS is a compilation of the best available scientific information. Included in the FEIS are data from the Stock Assessment Reports, which are peer reviewed by the Atlantic Scientific Review Group and subject to review by the public, and results from the Decision Support Tool, which underwent an independent peer review conducted by the Center for Independent Experts.

Comment 8.12: The data used to determine whale distribution is flawed and incomplete, and therefore should not be used to make regulations.

Response: NMFS disagrees with this assessment. The whale distribution data is the best available information. Although more data will help increase the accuracy of analysis results, there is no indication that results to date are incorrect, nor is there evidence that either the data or the analytical approaches taken to date are flawed. The data have been collected with strict adherence to established protocols, and analyses have used accepted peer-reviewed statistical methods.

Comment 8.13: What are the migratory patterns of right whales in LMA 2?

Response: An interactive map of right whale sightings data, including sightings in LMA 2, can be found online at *fisheries.noaa.gov/resource/map/north-atlantic-right-whale-sightings.*

Comment 8.14: NMFS should do more to gather data on right whale distribution, including increasing aerial, boat-based, and drone surveys.

Response: We agree that more data are needed to refine our understanding of right whale distribution. With available resources, NMFS is maintaining aerial surveys, increasing acoustic surveys and investigating additional tools to

document whale distribution and individual identification. NMFS is working to identify the primary factors that correlate with right whale distribution to help identify other areas where right whales are likely to occur to direct future survey efforts.

Comment 8.15: NMFS should develop ways to tag and track right whales.

Response: NMFS agrees that tagging would help us learn more about right whale movements and habitat use. Long-term attachments used in past studies require an invasive approach to implant tag anchors. These efforts were halted on right whales out of concerns regarding potential health impacts. NMFS has supported development of less invasive tags to track (greater than 24 hours) right whales since 2014. First, we began supporting an investigation into using dart-style Low Impact Minimally Percutaneous Electronic Transmitters (LIMPETs) on right whales. Although a few of the tags successfully tracked right whale movements through the mid-Atlantic, most tag attachments were relatively brief. Fortunately, there was no evidence of negative health impacts in any of the whales that were tagged. We also began, and continue to support, the development of blubber-only tags. These are slightly more invasive than the LIMPET tags. The fieldwork component of this study was interrupted by the global pandemic. Still, tag enhancements continue to be supported including investigations into tag materials, tag retention methods, etc. It should be noted that despite several decades of development, many of the technical and logistical challenges of tagging continue to limit the utility of this approach. It is therefore important for NMFS to continue and enhance existing monitoring programs to provide whale location information for a large portion of the population.

Comment 8.16: NMFS should use spotter planes to make fishermen aware of when whales are in their area.

Response: NMFS uses multiple means to track right whales, including aerial surveys and acoustic monitoring systems. Near real-time sighting information can be found on our website at *fisheries.noaa.gov/resource/map/north-atlantic-right-whale-sightings.*

Comment 8.17: Warming in the Gulf of Maine is causing changes in copepod distribution, driving whales to Canada, and out of Maine.

Response: NMFS agrees that large whales are susceptible to ecosystem changes caused by climate change and right whale habitat use changes have been documented. Baleen whales will most likely continue to expand or shift their current range in response to prey species but the nature of the impacts varies by species (MacLeod 2009). Right whale habitat shifts in recent years follow their preferred prey farther north as the Gulf of Maine warms (Meyer-Gutbrod *et al.* 2018, Meyer-Gutbrod and Greene 2018, Record *et al.* 2019a, Record *et al.* 2019b). Climate change impacts their preferred prey abundance, which is known to impede reproductive success in this species (Meyer-Gutbrod *et al.* 2015a). Since 2010, there has been a documented change in right whale prey distribution that has shifted right whales into new areas with nascent risk reduction measures, increasing documented anthropogenic mortality (Plourde *et al.* 2019, Record *et al.* 2019). However, data shows that while abundance and duration of stays may have shifted, right whales still occur in waters offshore of Maine and throughout the Gulf of Maine at various times of the year. Past and near real-time right whale sighting information can be accessed online at *fisheries.noaa.gov/resource/map/north-atlantic-right-whale-sightings.*

Comment 8.18: North Atlantic right whales do not occur in coastal, shallow waters or in LMA 1, and therefore, Maine coastal waters, particularly inside the 3 nm line, should be exempted from these regulations.

Response: Gear marking and weak insertion requirements inside the Maine exempted waters are not included in this rulemaking. These measures are (gear marking) or will (weak insertions) be implemented by Maine DMR. Note, however, that the risk reduction benefits of weak insertions are considered in the FEIS.

Comment 8.19: Massachusetts lobster and Jonah crab trap/pot fishing gear has never killed a right whale. These regulations will not save whales and will force Massachusetts lobstermen out of business.

Response: No gear remains on most right whales that bear entanglement scars. In the cases where gear does remain, it is rarely collected, and even more rarely has any identifying marks. Between 1980 and 2016, the New England Aquarium analyzed 1,462 right whale entanglement interactions (A. Knowlton pers comm). Only 110 of these incidents had gear still attached, and in only 13 cases could that gear be traced to the original set location. Because we lack information on exactly where interactions occur, we use areas of high co-occurrence of right whales and fishing gear as a proxy for identifying areas of high entanglement potential. For example, the Massachusetts Restricted Area was identified in the 2014 modifications to the ALWTRP based on high co-occurrence given frequent habitat use by North Atlantic right whales and fishing gear density. There are other areas in Massachusetts that have been identified as hotspots where entanglement risk is high for right whales based on predicted whale density and the presence and strength of trap/pot gear (see Chapter 3).

There are cases in 2011 and 2012 where gear was recovered and were identified as U.S. unknown trap/pot gear with red ALWTRP marks, consistent with the marking scheme for Massachusetts fishermen outside of exempted waters during those years. In 2001 and 2016, right whale mortalities or serious injuries in Massachusetts lobster gear were avoided only because they were successfully disentangled. Additionally, a number of anchored minke whales and humpback whales have been identified in Massachusetts gear in the past 15 years, so Massachusetts lobster buoy lines do entangle and kill whales.

Comment 8.20: Whale population data is flawed because right whales are traveling between Iceland and Labrador, and are not dead as the model suggests.

Response: The right whale population model estimates the number of right whales that have disappeared from the population. Given the high percentage of the population seen in most years, those whales are to some extent presumed dead. It is possible that some right whales are not dead, but have emigrated to another area for an extended period. Some individuals have been resighted after an absence of many years. This is unusual, however, and it is unlikely that all the whales considered dead have only emigrated. We currently have few records of right whales seen beyond Newfoundland, and to date the whales photographed in the Eastern Atlantic have all been seen again in U.S. waters. See our response to Comment 8.7 for more detail.

9. Restricted Areas

The vast majority of commenters associated with campaigns, as well as at least 97 unique commenters, support restricted areas as a management tool, with many suggesting that some or all of the closures should be larger and/or longer. A few commenters did not support specific restricted areas, and some did not support restricted areas of any kind. Many commenters supported the idea of dynamic management for restricted areas, such that the areas could be opened if no right whales were documented in the area at the time of a closure or areas could be closed upon the sightings of right whales. Several

commenters questioned the risk reduction value for the Massachusetts Bay Restricted Area, which we did continue to include in our risk reduction estimate for the Preferred Alternative, as described in FEIS Section 3.3.4.2.

Comment 9.1: Several commenters suggested that restricted areas should apply to gillnet/mobile gear.

Response: The ALWTRT is meeting to develop recommendations to reduce the risk of gillnet and other trap/pot fisheries on right whales and other large whales. Seasonal restricted areas are likely to be among the risk reduction strategies considered by the Team.

Comment 9.2: NMFS should use dynamic closures such as those being used in Canada. Dynamic closures would allow fishermen to keep fishing as long as the whales are not there.

Response: The ALWTRP has used Seasonal Area Management to protect right whales in areas of annual predictable aggregations since the inception of the Plan. The Plan also has employed dynamic management to protect temporary right whale aggregations. Measures implemented through amendments to the Plan in 2002 triggered closures or gear modification requirements for lobster and gillnet fishing within a prescribed distance from sightings of right whale aggregations. Borggaard *et al.* (2017) summarizes the ALWTRP's amendments, including the evolution of the Dynamic Area Management (DAM) program. More than 60 dynamic area management zones were implemented between 2002 and 2009. Borggaard *et al.* notes that the program was administratively burdensome and attracted significant complaints regarding feasibility and effectiveness, ranging from delayed implementation preventing whale protection, to such rapid implementation that fishermen could not safely remove or modify their gear in time for the required effective dates. Given these concerns about the DAM program, the Team modified the Plan to instead apply broad-based extensions of the gear modifications used in DAMs (such as sinking groundline required in most trap trawls through 2009 Plan amendments). Broad-based gear requirements afford protection to whales, and is a measure that is resilient to changes in whale and fishery distribution.

Although it was not effective at preventing mortalities in 2019, Canada's vessel speed and fishery dynamic management program seems to have afforded substantial protection to right whales in the Gulf of St. Lawrence in 2018 and 2020. Canada implements time-area closures with boundaries that vary based on direct observations that respond to annual or seasonal resources distribution changes. To be done well Canada currently implements an intensive and expensive surveillance program through aerial surveys and acoustic monitoring. Canada also has an agile regulatory implementation authority.

While NMFS and our collaborators may be able to support an intensive surveillance program when resources are available, the U.S. regulatory requirements are not as agile. As discussed above, while DAMs were being implemented, NMFS rulemaking was often unsuccessful at responding rapidly to changing conditions. NMFS rulemakings under the MMPA and ESA are also subject to procedurally complex Federal laws and requirements that Canadian resource management is not subject to, including NEPA, PRA, APA, and E.O. 12866. These laws include consultation requirements, notice and comment requirements, and environmental and economic analyses of the impacts of Federal rulemaking before final decisions can be made about Federal actions that could have environmental effects. Evaluating the impacts of future actions that have not yet been determined is logistically very challenging. NMFS, other Federal agencies, and many collaborators are continuing to develop models that may be able to project prey and whale distribution into future months that could provide tools to develop predictable triggers for dynamic area management measures.

Comment 9.3: Many commenters voiced concern that NMFS had not adequately accounted for the effort displacement and crowding that will be caused by closures.

Response: In response to these comments, we modified our analysis in the FEIS to consider the impacts that would be caused by vessels relocating gear from the LMA 1 Restricted Area to offshore waters of Maine Lobster Zones C, D, and E. The analysis in FEIS Section 6.3 estimates the landing reduction for all vessels outside 12 nm in Maine Lobster Zones C, D, and E by using data from the Maine DMR harvester reports, which are only available for 10 percent of Maine lobster fishermen, and from 100 percent of the dealer reports.

Comment 9.4: How will the restricted areas affect mobile gear fishermen?

Response: Restricted areas may result in opening up of fishing habitat that mobile gear vessels have not been able to access due to the presence of lobster trawls, although the benefits may be marginal.

Mobile gear fishermen have expressed concerns about conflicts with ropeless gear trawls that may be fished under EFPs and that could increase gear conflicts if trawlers do not know the gear is on the bottom. The final rule changes existing and new seasonal restricted areas from fishing closures to buoy line closures. This would allow the use of gear fished without buoy lines (commonly referred to as ''ropeless'' gear). Fishermen who obtain EFPs to fish without buoy lines could pose some gear conflict threat to mobile gear fishermen. Ropeless experimentation with the proper authorization can be done anywhere, however access to areas otherwise closed to lobster fishing could incentivize fishermen to conduct ropeless fishing within the seasonal restricted areas.

Ropeless experimentation in the lobster and black sea bass trap/pot fisheries is occurring already. In the northeast, NMFS and ropeless fishing collaborators are working with groundfish and scallop bottom trawl fishermen to assess bottom marking technology being developed to allow mariners to detect lobster. Concerns that this experimentation will occur broadly in the near term appear to be unfounded. Due to the cost of ropeless technology, for the foreseeable future we believe that ropeless experimentation will be limited to collaborators accessing the NMFS ropeless gear cache, with perhaps an additional 10 percent of trawls being fished with other ropeless units. The NMFS gear cache also loans technology to collaborating mobile gear fishermen. For the next few years, we anticipate that the largest number of trap/pot trawls that could be supported by these efforts would approach about 330 pot/trap trawls coastwide (Maine through Florida). Additionally, we anticipate that EFP conditions will require participants to work with adjacent trawl fisheries, as well as other notice requirements that will prevent gear conflicts and support enforcement efforts. Collaboration across gear sectors, use of the NMFS ropeless gear cache, and reporting and monitoring conditions under exempted fishing permits should keep costs and gear conflicts to a minimum while ropeless technology is evaluated for potential use as an alternative to fishery closures.

Comment 9.5: Many commenters were concerned that restricted areas would create ''walls'' of dense gear right outside the borders, posing a greater risk to right whales.

Response: We have modified our analysis in the FEIS to consider gear displacement in response to the restricted areas. These analyses resulted in changes in the South Island Restricted Area selected for final rulemaking, and was one of the reasons that a seasonal buoy line closure was not selected for the Georges Basin Restricted Area in the preferred alternative. Updated calculations on the gear displacement effects of restricted areas suggested the alternative restricted areas displaced gear to areas of equal or higher co-occurrence, although ''walls'' of gear were not projected. The borders of the restricted areas are not uniformly productive lobster habitat. Fishermen are more likely to redistribute their gear to fishing ground that is productive. Please see Chapters 3, 5, and 6 of the FEIS for more details.

Until recently, NMFS had no evidence that existing closures created ''walls'' of gear. In April 2021, however, concentrations of gear were observed in a small open area east of the state of Massachusetts extended spring closure area and west of the Massachusetts Restricted Area (MRA). This appears to be an unintended consequence of the state extension of the MRA in state waters to the northern state boundary. Although this patch of Massachusetts Bay is not a productive fishing ground during this season, fishery managers believe that fishermen permitted to fish in both state and Federal waters did not remove their gear in response to the closure, but instead moved gear out of the state waters and into this small open band of water while waiting for the MRA to open up May 1 (Bob Glenn, Massachusetts DMF, pers comm April 26, 2021). Federally permitted fishermen may also have been staging their gear, taking it out over multiple trips and days until the MRA opened. NMFS will consider future rulemaking to extend the northern boundary of the MRA across to the coast to close that gap and prevent an annual development of this high-risk dense gear storage area. The unconstricted nature of waters surrounding other seasonal restricted areas are not expected to similarly aggregate gear.

Comment 9.6: NMFS should add a restricted area north of Georges Bank and/or expand the Georges Bank restricted area. Georges Basin has a right whale hot-spot analysis five times greater than LMA 1.

Response: The final rule does not implement a restricted area in Georges Basin, but instead includes additional reduction of lines in this area (50 traps per trawl within the restricted area). The previous analyses suggest that it is difficult to restrict fishing in this hotspot without pushing effort to areas that increase risk outside of the hotspot based on predicted whale density (see co-occurrence maps in Chapter 5 and Appendix 5.2 the DEIS). Broad line reduction, however, achieves line and associated risk reduction without incidentally increasing co-occurrence of gear with right whales within this area.

Comment 9.7: The Pew Charitable Trusts' online message campaign of more than 47,000 submissions requested that NMFS implement a year-round closure South of the Islands, and seasonal closures in three areas in the Gulf of Maine: Downeast summer closure from August 1–October 31, a western Gulf of Maine spring closure from May 1 to July 31, and an offshore migration closure from October 1 to April 30.

Response: NMFS analyzed the Gulf of Maine closures proposed by The Pew Charitable Trusts along with the year-round closure proposed in southern New England. Some of the areas identified were predicted to move gear into areas of equal or greater risk. One area south of Cape Cod is similar to the seasonal restricted area implemented in this rule, although the area they proposed was larger in size and duration. The risk reduction estimate for the configurations and seasons proposed by Pew would achieve an estimated 12 percent risk reduction according to Decision Support Tool Version 3, using the updated right whale habitat density model (2010–2018).

However, to implement these measures, NMFS would have to set aside the current rulemaking conducted under the ALWTRT, and divert staff working on final rule and FEIS to prepare a new rule and NEPA analyses, not a small undertaking. The final rule, which is estimated to achieve approximately 67 percent risk reduction, is the NMFS priority. See FEIS Section 3.4 for a further discussion of the petition and other alternatives that were considered but rejected.

Comment 9.8: Many commenters wanted to know how NMFS will evaluate and modify restricted areas based on changes to whale distribution, and how often those evaluations will take place.

Response: NMFS anticipates annual meetings of the Team to review the North Atlantic right whale and other large whale distribution and abundance data, mortality and serious injury updates, retrieved entanglement gear analyses, fishing effort data, and other relevant research results. These data will be incorporated into the next iterations of the Decision Support Tool. The Team will consider modifications to seasonal restricted areas on an annual basis, and the team will continue to make recommendations to amend the Plan. Following the recommendations of the NMFS Expert Working Group, which reviewed the right whale surveillance and monitoring programs (Oleson *et al.* 2020), the NEFSC anticipates a three-year surveillance and review cycle, providing an additional opportunity to review right whale distribution data to evaluate seasonal restricted areas and other conservation measures contained within the ALWTRP.

Comment 9.9: Restricted areas should be based on the best available science, which includes recent and historical sightings, acoustic data, and prey data.

Response: As described in FEIS Section 5.1, the seasonal restricted areas that are being implemented through the final rule are based on the best available information, including recent and historical right whale and other large whale sightings data, acoustic monitoring data, and data on prey distribution. The FEIS includes analysis based on updated data that has become available since we drafted the DEIS.

Comment 9.10: Dynamic triggers for closures would not be feasible, and NMFS should remove that from consideration in the final rule.

Response: NMFS agrees that real time data are not available to develop an effective trigger for restricted areas. To reduce risk to right whales, the LMA 1 area will be implemented as a closure to lobster/Jonah crab fishing with buoy lines from October through January each year.

Comment 9.11: Commenters suggested that LMA 1 was designated a ''hotspot'' for right whales based on old data, and should be analyzed using data after the ecosystem shift that began in 2010. As a result of old data, the analysis in the proposed LMA 1 closed area appears to be disproportionately high in risk reduction value compared to the Massachusetts Restricted Area, given the relatively low abundance of right whales in that area and the high abundance in Cape Cod Bay.

Response: In the DEIS, we evaluated whale data from 2003 to 2017 (Whale model 8, DST Version 2). The proposed LMA 1 Seasonal Restricted Area was estimated to have the same risk reduction value of the MRA. However, when the Duke whale model was updated to include only whale distribution since 2010 (Whale model 11, DST Version 3), while the spatial distribution off Maine generally didn't change, the relative abundance of right whales did. Using the newer data, the

LMA 1 restricted area contributes less risk reduction benefit (approximately 6.6 percent) than was considered in the DEIS when considered across all of the Northeast Lobster Trap/Pot Management Area. However, the value of the LMA 1 Seasonal Restricted Area remains an important piece of the risk reduction for Maine permitted fishermen. See FEIS Sections 3.1.2.5.1 and 5.3.1.1.2 for more information regarding the selection and analysis of the LMA 1 restricted area.

The LMA 1 Seasonal Restricted Area was created to supplement the risk reduction contribution of the Maine lobster fishery to the overall 60–80 percent risk reduction for the Northeast Trap/Pot Management Area, following the ALWTRT's recommendation in April 2019 to spread risk reduction across jurisdictions. The original recommendation approved by the Maine caucus achieved that level of risk reduction primarily through a 50 percent line reduction. However, after the ALWTRT meeting, the Maine DMR and the Maine Lobstermen's Association members on the Team withdrew their support for such extensive line reduction measures. Maine DMR developed alternatives and used an alternative risk reduction calculation to demonstrate their belief that their alternative, which included broad use of weak insertions and some trawling up to reduce vertical buoy line numbers, achieved a 60 percent risk reduction. NMFS' analysis of the Maine risk reduction measures for the DEIS estimated that the Maine DMR revisions were insufficient to achieve 60 percent risk reduction for Maine-permitted fishermen in LMA 1. In discussions regarding preliminary analyses with Maine DMR prior to their submission of alternatives, NMFS suggested a closure along the LMA1 Restricted Area border with LMA 3 to improve the risk reduction calculation for that area during winter months when right whales have been demonstrated to aggregate in offshore waters.

Comment 9.12: NMFS erred in conducting hot-spot analysis by Lobster Management Area rather than the region as a whole, and as a result, fails to provide evidence that the LMA 1 Restricted Area is supported by the data.

Response: We disagree. As analyzed in FEIS Section 5.1, and in comment 9.11 above, the LMA 1 Restricted Area provides significant risk reduction for right whales. This area was identified as part of a Northeast Trap/Pot Management Area fishery-wide hotspot analysis. See FEIS Section 3.1.2.4 for further details.

Comment 9.13: Several commenters suggested that LMA 1 should be closed in the spring rather than fall, both to alleviate lost profits and to protect calves.

Response: In evaluating the risk reduction provided by the restricted areas, we relied on the peer-reviewed DST. The DST does not indicate substantial risk reduction from restricted areas implemented in the spring or summer months. The DST indicates that October through January demonstrate the most effective risk reduction to right whales. See FEIS Section 5.1 for more information. Estimated right whale habitat density and co-occurrence is included in the table below.

TABLE 5—LMA 1 MONTHLY RIGHT WHALE DENSITY AND CO-OCCURRENCE WITH BUOY LINES

Month	Right whale habitat density	Right whale co-occurrence
January	6.31	23.50
February	1.37	3.87
March	0.12	0.33
April	0.16	0.43
May	0.98	1.74
June	0.85	1.26
July	0.44	0.66
August	0.17	0.37
September	0.35	0.74
October	4.50	11.00
November	8.75	24.42
December	5.37	15.99

Comment 9.14: NMFS should allow ropeless fishing in LMA 1.

Response: The LMA 1 Seasonal Restricted Area would be a buoy line closure rather than a fishery closure. Fishermen with an EFP for fishing without the use of persistent buoy lines would be able to fish within the seasonal restricted area from October to January.

Comment 9.15: NMFS should reconfigure the LMA1 restricted area so that it would be narrower and run the entire length of the Area 1 line, and should also be at least the same size—if not larger—on the Area 3 side of that line, too. This would spread the burden of the closure, and would benefit the whales according to the co-occurrence model. It would also reduce crowding at the area borders, and the accompanying gear conflicts and losses.

Response: This is a novel idea that could have been assessed if it had been received during scoping. Because this proposed seasonal restricted area was not analyzed in the DEIS, we are unable to implement it through final rulemaking at this time. The ALWTRT could consider this as an amendment during future discussions.

Comment 9.16: A number of commenters suggested that the LMA 1 restricted area was not supported by the acoustic data, either because acoustic gliders were not deployed at the right time of year, or because the acoustic data showed that only 27 percent of the right whale detections were inside LMA 1.

Response: The right whale habitat model (Duke Model Version 11) that the LMA 1 Restricted Area was based on projects a higher density of whales in this area throughout October to January. Like some commenters, given the lack of recent systematic surveys in this area, we were concerned that whales might not be using this area after they shifted distributions in the last decade. The glider data validated that right whales are still in LMA 1 during the season predicted by the Duke Whale Habitat Model (Version 11).

The commenter notes that only 27 percent of reported positions from deployed acoustic gliders were inside the LMA 1 Seasonal Restricted Area and season. The glider data supports the Duke whale habitat model (Version 11), which estimates higher whale densities on the LMA 3 side of the LMA boundary than the LMA 1 side. The glider data does, however, validate that whales are still in this area seasonally. Gear density on the LMA 3 side is much lower than on the LMA 1 side. We initially assessed a restricted area that included both sides of the boundary, but determined that there was minimal benefit from the LMA 3 side. LMA 3 vessels are adopting trawling up and weak line measures that provide greater risk reduction, so the restricted area does not include the LMA 3 side of the boundary.

During the comment period, we received information that we had underestimated the number of vessels that would be affected by the LMA 1 Restricted Area. In our revised analysis, we considered that in conjunction with the fact that there are only about 75 LMA 3-permitted vessels. LMA 3 vessels have higher rates of vessel trip reporting, which contributes to our estimates of gear distribution. However, because we also received anecdotal reports of higher gear densities on the LMA 3 side than our data indicate, we are investigating whether LMA 1 permitted vessels are inaccurately reporting location, or whether we are we are underestimating gear density and entanglement threat on the LMA 3 side.

We have modified our analysis of the value of the LMA 1 Seasonal Restricted Area in the FEIS. See Chapters 3 and 5.

Comment 9.17: NMFS should add restricted areas in LMA 3, as a huge majority of the boats there already fish

45 pot trawls or longer, and the proposed regulations will have little effect on reducing the risk posed by fishing in LMA 3.

Response: Alternative 3 analyzed restricted areas in offshore waters of LMA 3. The final rule does not implement restricted areas in LMA 3, and instead requires a combination of trawling up and weak rope requirements. Some areas originally considered for seasonal closures to buoy lines in LMA 3 were difficult to create without just shifting the risk (see co-occurrence maps in Chapter 5 of the FEIS). Broad line reduction and weak rope requirements achieved associated risk reduction without incidentally increasing co-occurrence with right whales within this area. Contrary to the comment, the average baseline gear configuration according to the line model in the DST is 35 traps per trawl, so requiring a minimum of 45 traps per trawl is predicted to reduce lines in this area. The new preferred alternative offers a conservation equivalency that would result in an average of 44 traps on a trawl, but with longer trawl lengths occurring in areas of high whale density, thus offering slightly greater risk reduction for LMA 3.

Comment 9.18: The Massachusetts Bay Restricted Area should be expanded.

Response: The final rule would expand the restricted area to include state waters to the Massachusetts/New Hampshire line, mirroring the regulations implemented by Massachusetts Division of Marine Fisheries in the Code of Massachusetts Regulations, Title 322 Section 12.

Comment 9.19: We ask NMFS to expand its proposed trigger of three right whales to extend the Massachusetts Bay Restricted Area to include a cow/calf as a trigger, in addition to three right whales.

Response: The final rule does not include a dynamic opening mechanism or trigger for the Massachusetts Bay Restricted Area.

Comment 9.20: Seasonal restricted areas should be re-evaluated as a management measure once the commercial fishery transitions to ropeless fishing systems.

Response: We anticipate that the ALWTRT will consider the appropriateness of existing and new seasonal management areas at meetings annually within the context of the best available information on large whale distribution, abundance, mortality, birth rates, and population metrics. Should ropeless fishing develop as an operationally feasible alternative to closures, that will also be evaluated.

Comment 9.21: What is the risk reduction value to other large whale species of the South Island restricted area?

Response: The South Island Restricted Area was designed to reduce co-occurrence and associated risk of entanglement to right whales and is not a hot spot for other species. For the FEIS, new analyses conducted by the NMFS Decision Support Tool team evaluated the amount of humpback and fin whale co-occurrence reduction in the expanded South Island Restricted Area. These analyses found that, though these species may occur within this area and indirectly benefit from a reduction in buoy lines, this buoy line closure does not measurably reduce co-occurrence and the associated overall entanglement risk for humpback whales or fin whales within the Northeast Trap/Pot Management Region.

Comment 9.22: NMFS should establish a larger restricted area south of Nantucket, which has become recognized as an important winter habitat for right whales.

Response: The final rule implements the larger South Island Restricted Area, which had been analyzed in Alternative 3 (Non-preferred) in the DEIS. See FEIS Chapter 3 for the South Island Restricted Area selected for implementation.

Comment 9.23: The South Island Restricted Area should be closed year-round, as NMFS has confirmed that the area south of the islands is a year-round habitat for the species.

Response: The monthly risk scores within the South Island Restricted Area are shown in the table below. The risk within this specific area is estimated to be very low between June and November. A year-round closure is not supported by this data. The closure is being implemented when the risk level and predicted whale density are the highest.

TABLE 6—SOUTH ISLAND RESTRICTED AREA MONTHLY RISK SCORES

Month	Default risk	Right whale habitat density
1	4.12	83.85
2	3.54	87.82
3	3.25	92.54
4	3.68	104.14
5	1.32	47.87
6	0.19	4.54
7	0.03	0.61
8	0.02	0.5
9	0.03	0.67
10	0.08	1.4
11	0.38	8.4
12	1.95	45.39

Comment 9.24: Because right whales use the South Island area year-round, NMFS should require only one buoy line between May and October to reduce risk of entanglement in this heavy offshore gear.

Response: The use of one buoy line on long trawls in areas of high mobile gear fishing effort would likely increase gear conflicts until technology becomes available that allows surface detection of bottom gear. Work on this challenge is currently being conducted to support the development of ropeless fishing methods, including a collaboration with mobile gear fishermen to assess bottom gear marking technology. These efforts could make this possible for future consideration as a risk reduction measure.

Comment 9.25: NMFS has drastically underestimated the amount of fishermen actively fishing in the LMA 1 restricted area, and thus the effects of the restricted area on fishermen. If there are only 45 fishermen in the LMA 1 restricted area, the risk reduction value of the closure should be much lower, since that would mean there aren't many buoy lines in that area.

Response: Based on the comments we received from Maine fishermen saying that we had underestimated the number of fishermen in LMA 1, we have modified our economic analysis of the impacts of the LMA 1 seasonal restricted area. Fishermen fishing in the fishing zones that are bisected by the LMA 1 restricted area are not all required to submit vessel trip reports, making a precise count of affected vessels difficult. Based on fishermen's input, the evaluation, which can be found in FEIS Section 6.3, now assumes that up to 50 percent of the vessels that fish outside of 12 nm in Maine Zones C, D, and E, up to 60 vessels, may have landings from the restricted area. The other half of the vessels may be crowded by the vessels that move from the restricted area into the waters 12 nm offshore of Maine Zones C, D, and E, reducing their catch rates. As a result, our estimate of vessels that may be affected by the LMA 1 Restricted Area has been increased to 120 in the FEIS. See FEIS Section 6.3.

Estimated buoy line numbers are only one component of the risk estimated for the LMA 1 Seasonal Restricted Area. Three factors are considered: Whale density, gear density, and threat of the configuration of gear used in an area. Those were sufficient to identify this area as a hotspot, as described further in FEIS Section 3.1.2.4.

Comment 9.26: If NMFS closes an area during the summer, the available

fishing window would be cut by 40 to 50 percent.

Response: There are no summer restricted areas in this final rule. For analysis of the restricted areas being implemented in this final rule, see FEIS Section 1.4.3.

Comment 9.27: NMFS should require that fishing vessels operate at less than 10 knots under EFPs in restricted areas, regardless of their vessel length.

Response: Vessel speed restrictions are likely to be included as a condition of EFPs for activities in seasonally restricted areas. Evidence suggests that 10 knot speed restrictions within areas of large whale occurrence have successfully mitigated vessel strikes (Laist *et al.* 2014). Fishing vessels actively fishing either operate at relatively slow speeds, drift, or remain idle when setting, soaking and hauling gear. Listed species in the path of a fishing vessel would be more likely to have time to move away before being struck. However, fishing vessels transiting to and from port or between fishing areas can travel at greater speeds and could strike a right whale or other vulnerable species. A 10-knot transit requirement for fishing vessels authorized to harvest lobster from seasonally restricted areas is merited as these areas are seasonally important to right whales.

Comment 9.28: Closures in offshore areas would also minimize the impact on fishermen, because the majority of lobster fishing occurs closer to shore.

Response: For an explanation for how seasonal restricted areas were selected, see FEIS Section 3.1.2.4 and for a description of the number vessels impacted and the economic impacts by seasonal restricted areas considered in the preferred and non-preferred alternatives, see FEIS Section 6.3.

10. Ropeless Technology

We received thousands of comments, including the majority of campaign comments, on ropeless fishing, with the vast majority of non-fishermen supporting an immediate transition to ropeless gear throughout the northeast lobster and Jonah crab trap/pot fishery, and the majority of fishermen opposing ropeless fishing on the grounds that it is expensive, unproven, and impractical for a variety of reasons. While ropeless technology is not required in the final rule, fishermen who wish to try ropeless fishing may apply for an EFP, and will be able to fish in the restricted areas to test the technology.

Comment 10.1: NMFS should promote the permitting process and make sure that all fishermen are aware of and have the opportunity to participate in EFP trials of ropeless gear.

Response: An EFP is a permit issued by NMFS' Greater Atlantic Regional Fisheries Office. EFPs authorize a vessel to conduct fishing activities that would otherwise be prohibited under the regulations at 50 CFR part 648 or part 697. Generally, EFPs are issued for activities in support of fisheries-related research, including landing undersized fish or fish in excess of a possession limit for research purposes, seafood product development and/or market research, compensation fishing, the collection of fish for public display, or in this case, testing various aspects of ropeless gear. Anyone that intends to engage in an activity that would be prohibited under these regulations (with the exception of scientific research on a scientific research vessel, and exempted educational activities) is required to obtain an EFP prior to commencing the activity. While NMFS believes that ropeless gear should be widely tested by vessels under varying operating conditions, researchers submitting the EFP requests will be responsible for soliciting and securing participants.

Comment 10.2: Many fishermen had questions and concerns about the feasibility of ropeless fishing. Fishermen were concerned about whether ropeless technology could work in areas subject to different tides, on different bottoms, and in different weather conditions. Others raised concerns about conflicts with bottom-tending mobile gear, conflicts with other ropeless traps/pot gear, a reported 80 percent retrieval rate, an increase in lost gear, which leads to ghost gear, and the need for a marking system. Still others were concerned that ropeless technology is not ready to be implemented, and would take too long to implement. Concerns about repairs, enforcement, expense, and safety hazards were also raised.

Response: We acknowledge that considering broad scale deployment of ropeless fishing requires additional planning and research to overcome obstacles to implementation. This would include many of the potential issues identified within these comments. However, technologies are developing to enable fishermen to increase the rate of successful retrieval of ropeless gear and to minimize gear conflicts and increase enforceability over time. NMFS has invested a substantial amount of funding in the industry's development of ropeless fishing gear. We anticipate that these efforts to facilitate and support the industry's development of ropeless gear will continue, pending appropriations, including cooperative research and field trials, economic analyses and cost projection, and policy implementation, among the many factors that require consideration and further study.

Comment 10.3: NMFS should offer buybacks or subsidies for fishermen unable to transition to ropeless gear.

Response: Section 312(b) of the MSA establishes the mechanism for NMFS to conduct a buyback or fishing capacity reduction program. It requires funding appropriations from Congress and a determination that the program is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable or significant improvements in the conservation and management of the fishery.

Comment 10.4: NMFS did not analyze the costs or effects of conflicts between ropeless gear and bottom-tending mobile gear, or the effects of ropeless-only fishing areas on mobile gear fisheries, some of which significantly overlap with prime scallop grounds.

Response: NMFS agrees that this would be useful information to analyze but was unable to provide a specific cost estimate in the FEIS. We have modified our discussion of the effects of gear conflicts associated with ropeless gear. See FEIS Section 3.3.3.

Comment 10.5: NMFS needs to invest in the technology to make it viable, which should include working with manufacturers to develop virtual gear marking systems and to tailor the devices to the needs of fishermen in different areas.

Response: NMFS has invested a substantial amount of funding in the collaborative development of ropeless fishing gear. Virtual gear marking systems are being tested by mobile and fixed gear fishermen and we anticipated that these efforts will continue, pending appropriations.

Comment 10.6: Ropeless gear regulations will be difficult to impossible to enforce.

Response: Currently ropeless fishing is conducted under EFPs or state authorizations to exempt fishermen from the fishery management regulations that require the use of buoy lines to notify mariners of the presence of fixed fishing gear. Conditions of authorization include notification of effort, monitoring and reporting. If a permittee does not abide by the terms of the permit, the permittee will be subject to enforcement action. As data is collected throughout the EFP process for ropeless gear, law enforcement has the opportunity to review that data. Lessons learned from ropeless testing will be incorporated into an enforcement strategy in the event that ropeless

technology is authorized for use in the fishery.

Comment 10.7: For ropeless fishing to work, we will need a new trap allocation system. There are too many traps in the water for ropeless to work.

Response: We recognize that feasibility in terms of both affordability and effective avoidance of gear conflicts will be most challenging in areas of dense fishing effort. A number of studies have demonstrated that effort reduction could be done without substantial economic impacts, see for example, Myers and Moore (2020) and Acheson (2013). Commenters including fishermen have suggested that a reduction in traps would provide fast and effective risk reduction. Less rope might ameliorate the need for further measures in some areas, and would reduce the cost of any future broadscale implementation of ropeless fishing.

Comment 10.8: NMFS received several comments on space-sharing to address potential gear conflicts associated with ropeless gear. One commenter suggested that NMFS should not require trap fishermen and mobile gear fishermen to undertake space-sharing negotiations themselves. The other commenter suggested the use of seasonal areas for different gear types.

Response: If broad adoption of ropeless fishing methods is considered and area management is deemed essential for success in preventing gear conflicts, NMFS anticipates that engagement and collaboration with the fishery management councils and commissions would be required to successfully design and implement any area-based management following fishery management public processes. This is well beyond the scope of what is being implemented by this rule.

Comment 10.9: NMFS should fast-track and simplify permitting to make ropeless fishing an easier option for fishermen.

Response: The provisions within this rule expand fishermen's options and provide incentives to fish with ropeless gear in an area otherwise restricted under the ALWTRP. The NMFS Greater Atlantic Region Fisheries Office is considering conducting an Environmental Assessment (EA) identifying and analyzing ropeless fishing under EFPs, including measures to minimize environmental impacts. The EA would facilitate development of EFP requests and reduce the need of the applicant for separate environmental analysis, expediting the EFP process substantially. The Northeast Fisheries Science Center has developed a ''gear library'' for collaborating fishermen to access ropeless gear and virtual gear marking technology. We expect to continue to learn about the feasibility of ropeless gear on a broader scale as more fishermen take advantage of the opportunity to try ropeless. If operational challenges including surface markings are overcome, NMFS would work with the Council to determine if fishery management regulations could be modified to not require buoy lines, allowing ropeless fishing without an EFP.

Comment 10.10: NMFS should develop a comprehensive roadmap for fishermen to permanently transition to ropeless gear so that they can continue to fish without endangering right whales. Relying on EFPs is not a long-term solution.

Response: NMFS is currently developing a ''Roadmap to Ropeless Fishing'' comprehensive plan to document the agency's approach to researching and testing ropeless gear. This plan will also include economic analyses and potential policy pathways of ropeless fishing, along with identifying partners and establishing short and long-term goals for ropeless research and development

Comment 10.11: For ropeless to work, there needs to be a single universal platform for all devices, so that all fishermen may see other's gear and locate their own.

Response: Ropeless gear and the technologies enabling it have evolved rapidly in recent years. If ropeless fishing continues to develop, other technologies platforms such as those to view the location of set ropeless gear and to prevent gear conflicts and facilitate law enforcement, will need to develop concurrently.

Comment 10.12: NMFS should establish additional ropeless restricted offshore areas, and require the offshore fishery to transition to ropeless gear within three years.

Response: We will continue to evaluate the latest population abundance, mortality and serious injury, and PBR estimates calculated for large whales to inform the risk reduction targets that we provide to the ALWTRT. As we work to reduce lethal entanglement risk as required by the MMPA, we will continue to convene the Team to analyze the latest data and to make recommendations to us as to how best to fulfill these goals.

Comment 10.13: Due to the high incidence of right whales in Cape Cod Bay from February to May, we recommend that NMFS not permit testing of ropeless fishing systems during these times.

Response: We recognize that in some areas at some times, like Cape Cod Bay in late winter/early spring, any additional risk to right whales (increased vessel traffic, etc.) may be unacceptable. These risks may be evaluated and avoided or mitigated on an individual basis as applicants seek EFPs for ropeless experimentation within ALWTRP restricted areas.

Comment 10.14: There is no way to implement ropeless in the gray zone, where Canadians are also setting their gear.

Response: The rule does not require ropeless fishing in the gray zone or anywhere else.

Comment 10.15: Ropeless fishing will still put thousands of end lines in the water column, but without tension on them, posing a greater risk for all marine mammals and boaters.

Response: Ropeless fishing as it is currently being tested would only result in buoy lines in the water column when a fishing vessel is on site to retrieve the trawl. While we agree that operationalization of a ropeless fishery will require much more planning and evaluation in the future, ropeless vertical lines would spend a significantly lower proportion of time in the water column than a traditional fixed vertical line with a surface buoy. This would significantly lower exposure to marine mammals and therefore significantly lower entanglement risk.

Comment 10.16: NMFS erred in asserting that ropeless gear should be considered ''neutral risk'' as sinking groundline may still pose a risk to large whales. While ropeless gear is not expected to be widely used in the immediate future, technology may advance to make it more feasible, and so NMFS should re-evaluate the risk posed by the gear.

Response: To date, evidence of sinking groundline in large whale entanglements is limited, though we continue to investigate as the scarce data and opportunities allow. The discussion in the FEIS was modified per comments about possible addition of risk in areas where none currently occurs in existing closed areas. The qualitative discussion of risk including anticipated conditions while ropeless fishing is developed is summarized in the FEIS Section 5.3.1.1.2.1.2.

11. Stressors on Right Whales

Dozens of commenters suggested a variety of factors that may be contributing to right whale decline, with many fishermen pointing to other known and possible causes of mortality. These commenters stated or suggested that this regulation will not contribute to the recovery of right whales due to issues beyond the scope of this

rulemaking. Among the issues raised are climate change, disease, pollution, inbreeding/small population size, previous entanglements, sonar, noise, oil spills, plastic pollution, shark predation on calves, vessel strikes, and offshore wind. The final rule and analyses in the FEIS are related to amendments to the Plan. The Plan and the take reduction process are restricted to monitoring and mitigating incidental mortality and serious injury of marine mammals incidental to particular U.S. commercial fisheries. The majority of these issues are outside the scope of this regulation, and many are beyond the authority of the NMFS but given the frequency with which these issues were introduced, we have provided some answers below.

Comment 11.1: Climate change/global warming is primarily to blame for the decline of right whales, and it has nothing to do with fishermen.

Response: The effects of climate change may have led to a shift in the distribution of right whales sometime between 2010 to 2013. This distribution shift increasingly brought right whales into areas of greater risk from human activities, including fishing. Entanglement in fishing gear is one of the primary causes of serious injury and mortality in right whales. See FEIS Section 1.1 for an overview.

Comment 11.2: Since the right whales have found their food sources in the Gulf of St. Lawrence, they are thriving again and this rulemaking is unnecessary.

Response: NMFS disagrees. Since the population started regularly using the Gulf of St. Lawrence, the population has declined by 23 percent overall, and roughly 200 right whales have died, many of them outside the Gulf of St. Lawrence. Threats to right whales are spread across their range in U.S. and Canadian waters.

The need to amend the ALWTRP is driven by the average reported mortality and serious injury to right whales due to fishery entanglement compared to PBR is 0.8 per year and, unfortunately, fishery entanglement-related mortality and serious injury is 5.55 whales per year (Hayes *et al.* 2020). Since fishery entanglement-induced mortality and serious injury exceeds PBR, this rule is necessary.

Comment 11.3: NMFS should consider the effects of disease and increased pollution on right whales.

Response: NMFS agrees. In NMFS' Species in the Spotlight North Atlantic right whale five-year action plan, one of the five priorities identified for the next five years to halt the decline of this species is to ''Investigate North Atlantic Right Whale Population Abundance, Status, Distribution and Health.'' NMFS also convened a 2019 Health Assessment Workshop to help evaluate current health information data, including associated data gaps, and identified appropriate available and needed tools and techniques for collecting standardized health data that can be used to understand health effects of environmental and human impacts, and inform fecundity and survivorship models to ultimately guide right whale recovery (Fauquier *et al.* 2020). The Species in the Spotlight North Atlantic right whale five-year action plan is available online at *www.fisheries.noaa.gov/resource/document/species-spotlight-priority-actions-2021-2025-north-atlantic-right-whale.* Please see Chapter 8 of the FEIS, which has a summary of Cumulative Effects.

Comment 11.4: Right whales are suffering from inbreeding, and will never be able to have a viable population again, so there is no point to these regulations.

Response: Small population sizes may carry some greater risk of inbreeding as a potential limiting factor to recovery, however, there is evidence that natural populations have mechanisms to reduce the loss of genetic diversity (Frasier *et al.* 2013). Additionally, the North Atlantic right whale population has continued to produce healthy whales despite the relative low level of genetic variability when compared to other large whales, a condition that has apparently been sustained since the 16th century (McLeod *et al.* 2009). Numerous mammalian species have recovered from much smaller population sizes than the North Atlantic Right whale population, including Northern Elephant seals and gray seals in New England. Many of the great whale populations were decimated by the end of commercial whaling and most have recovered. Despite being reduced to about 260 right whales alive in 1990, North Atlantic right whales were genetically sound enough to recover, albeit slowly due to persistent human impacts, until peaking at 481 individuals in 2010. After 2010, the change in habitat use that involved more regular excursion into areas where management protections were not in place. This resulted in increased human-caused mortality and additional stresses, including both environmental food limitations and increased non-lethal entanglement. Together these stressors are likely contributing to documented reduced caving rates. While inbreeding could play a negative role here, there is little evidence to support that theory. After accounting for human-caused mortality, the 1990–2010 calving rates and population growth rates were well within normal cetacean population demographic rate. The changes in those rates since 2010 may be driven by increased anthropogenic mortality and climate change.

Comment 11.5: After vessel strikes, industrial sonar and ocean noise are the greatest threats to right whales. Has there been any research on the effects of Naval use of sonar in training, and the effects of ocean noise generally, on the increase or decrease in entanglements?

Response: We are not aware of any studies evaluating the correlation between ocean noise and rates of entanglement in fishing gear. However, given that right whales are not detecting fishing gear acoustically, it would seem highly unlikely that ocean noise levels would directly affect or have any relationship to entanglement rates. Furthermore, while increases in ocean noise is of concern for the communication ability for right whales and many other species, these effects are generally ''sub-lethal,'' whereas entanglement in fishing gear can lead directly to serious injury and mortality.

Comment 11.6: Did the 2010 BP Deepwater Horizon oil spill in the Gulf of Mexico or a change in food source affect right whale birth rates?

Response: NMFS is not aware of any studies, data, or evidence that suggest right whales have been affected by the BP Deepwater Horizon oil spill. For information on factors that may affect birth rates, see Chapter 8 of the FEIS, which has a summary of Cumulative Effects.

Comment 11.7: NMFS should consider the environmental impact of the consumption of additional plastic products this rule will require.

Response: This rule is not likely to change the need for ropes or weak links made from plastic material. The final rule may temporarily increase the production of new inserts, which may have plastic components, but ultimately would decrease with the reduction of gear in the water. Please see Chapter 5 and for a description of indirect effects, the likelihood of ghost gear, and frequency of gear replacement, as well as Chapter 8 for our Cumulative Effects Analysis.

Comment 11.8: NMFS should consider the role of seismic testing in right whale population declines.

Response: Seismic survey operators for oil and gas exploration require permits from the Bureau of Ocean Energy Management (BOEM). As part of issuing these permits, BOEM consults with NMFS under Section 7 of the ESA

to ensure the proposed action (*i.e.,* the seismic surveys) does not jeopardize the continued existence of any ESA listed species, including North Atlantic right whales. Through this process, NMFS fully evaluates the potential impacts of seismic testing on the right whales (*e.g.,* Biological Opinion on the Bureau of Ocean Energy Management's Issuance of Five Oil and Gas Permits for Geological and Geophysical Seismic Surveys off the Atlantic Coast of the United States, and the NMFS' Issuance of Associated Incidental Harassment Authorizations at *https://repository.library.noaa.gov/view/noaa/19552*). Seismic surveys for other purposes such as those conducted by the National Science Foundation or the United States Geological Survey for research purposes also require the same type of consideration under Section 7 of the ESA (*e.g.,* Biological Opinion on a National Science Foundation-funded seismic survey by the Scripps Institution of Oceanography in the South Atlantic Ocean, and Issuance of an Incidental Harassment Authorization pursuant to section 101(a)(5)(D) of the Marine Mammal Protection Act by the Permits and Conservation Division, National Marine Fisheries Service at *https://repository.library.noaa.gov/view/noaa/22585*). Finally, any take of marine mammals that is likely to occur as a result of these seismic surveys requires authorization under the MMPA (*e.g.,* Incidental Take Authorization: Oil and Gas Industry Geophysical Survey Activity in the Atlantic Ocean at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-atlantic*), and as part of this authorization, NMFS also analyzes impacts to marine mammal population stocks, including right whales.

Under both the MMPA and ESA, in authorizing take of marine mammals including right whales, NMFS requires mitigation and monitoring as well as terms and conditions to monitor and reduce the impacts from such take. However, it is important to note that there is no concrete evidence that seismic surveys are likely to have any population level effects on large baleen whales such as right whales. Furthermore, the impacts of seismic surveys on the vital rates (*e.g.,* survival, reproduction, growth) of individual baleen whales are not well understood, but current evidence does not support that they cause serious injury, mortality, or lower reproduction. Finally, at present, and in the recent past, there is very little seismic survey activity in the U.S. Atlantic Ocean other than infrequent surveys conducted for scientific research purposes that typically use lower source level (*i.e.,* quieter) airguns as compared to the louder oil and gas exploration surveys such as those in the Gulf of Mexico.

In summary, NMFS does evaluate impacts from seismic surveys on right whales and while there have been and currently are few surveys being conducted, through the MMPA and ESA ensures that such surveys are not furthering the decline of the population.

Comment 11.9: Many commenters voiced their concern that recent right whale mortalities and serious injuries were due to vessel strikes, and suggested that vessels should be a higher priority for NMFS than reducing entanglements in fishing gear. Several commenters pointed out that more right whale calves were born this year, a year in which the cruise ship industry was largely shut down due to the global pandemic, than in any recent years. Others raised concerns about mortalities and serious injuries caused by Naval, whale watch and shipping industry vessels. Many commenters favored expediting updated regulations on vessel speeds, including in shipping lanes.

Response: Right whales are particularly vulnerable to vessel strikes due to their use of coastal habitats and frequent occurrence at near surface depths. Furthermore, they are vulnerable to strikes by nearly all types and sizes of vessels operating within the whales' range. In 2008 (73 FR 60173, October 10, 2008), NMFS implemented regulations requiring most vessels equal to or greater than 65 feet in length to transit at speeds of 10 knots or less in designated Seasonal Management Areas (SMAs) along the U.S. East Coast. Concurrently, NMFS initiated a voluntary Dynamic Management Area (DMA) speed reduction program to provide additional protection for aggregations of right whales outside of active SMAs. To reduce the spatial/temporal overlap of whales and vessel traffic NMFS established recommended routes for vessels transiting Cape Cod Bay and into/out of ports in northern Florida and Georgia, and modified the shipping lane approaching the port of Boston.

In January 2021, NMFS released an assessment evaluating the conservation value and economic and navigational safety impacts of the speed rule (50 CFR 224.105). While the assessment is considered final, we sought comments on the report findings through March 26, 2021, as we evaluate the need for future action and modifications to the existing speed regulations.

The report evaluates four aspects of the right whale vessel speed rule: Biological efficacy, mariner compliance, impacts to navigational safety, and economic cost to mariners. It also assesses general trends in vessel traffic characteristics within SMAs over time, provides a detailed assessment of the speed rule's effectiveness and offers recommendations for strengthening the rule based on these findings. In addition to the assessment of the vessel speed rule, the report also evaluates mariner cooperation with the DMA program and investigates small vessel transit patterns through active SMAs.

NMFS is evaluating whether further efforts are needed to minimize the spatial overlap of right whales and vessel traffic. Reducing the speed of vessels transiting through right whale habitat remains the most viable option to reduce vessel strikes in U.S. waters. The review and information collected during public comment will be used to consider whether current measures are appropriate given recent shifts in right whale distribution. For more information, please see Chapter 8 of the FEIS, which has a summary of Cumulative Effects.

Comment 11.10: Many fishermen commented that they feared offshore wind energy projects would displace them, and questioned NMFS' role in permitting offshore wind energy projects.

Response: BOEM is the lead Federal agency and primary decision-maker for offshore wind development projects. NOAA works with BOEM and offshore wind developers to provide information and consultation on how offshore wind projects may affect endangered or threatened species, marine mammals, fisheries, marine habitats, and fishing communities. Each proposed project is evaluated individually, with opportunities for public input, which can be found on the BOEM website. NOAA's engagement on offshore wind activities is limited to our authorities under the NEPA, the ESA, the MMPA, and the MSA. Further information on NOAA's role in offshore wind development can be found on our website at *fisheries.noaa.gov/new-england-mid-atlantic/science-data/offshore-wind-energy-development-new-england-mid-atlantic-waters.*

12. Trawls

Many of the campaign commenters as well as 38 of the unique commenters supported trawling up as a way to reduce the number of vertical lines in the water, while 52 unique commenters disagreed, saying that trawling up is may instead result in more severe

entanglements and more danger to fishermen. Comments from NGOs and members of the public indicated concern about whether heavier trawl lines would increase the severity of entanglements. Fishermen voiced concerns about the specifics of trawling up requirements in particular areas. Several fishermen supported the option of splitting buoy lines, and having only one line on a trawl. Some fishermen were concerned that trawling up would have an impact on landings.

Comment 12.1: A 50 percent vertical buoy line reduction mandate would harm smaller vessels and lead to consolidation of the fishery.

Response: A 50 percent vertical line reduction is a measure in the non-preferred alternative, and is not be implemented under this final rule. See FEIS Chapter 2 for more details.

Comment 12.2: Trawling up is expensive, and will put some fishermen out of business.

Response: The final rule provides conservation equivalencies to provide more flexibility to fishermen. We expect these options to help fishermen choose the options that minimize their economic impacts. We understood from Maine DMR that the trawling up configurations developed through collaborations with Zone Councils were selected because fishermen could do them with minimal investment in time or new gear relative.

Comment 12.3: What will the effects of trawling up be on landings?

Response: The effects will depend on several factors, including the increase in the number of traps per trawl. For vessels trawling up fewer than 2 traps per set, we would expect to see a reduction rate of 0–5 percent on landings. For vessels trawling up 2 or more traps per set, we expect the landing reduction rate to be 5–10 percent. See FEIS Chapter 6 for more details including a summary of the limited previous investigations into the impacts of trawling up on catch rates.

Comment 12.4: NMFS should allow different trawls lengths depending on vessel sizes, vessel configurations (open/closed transom or equipment placement), distance from shore, and fishing depth. Several specific requests were submitted, such as four traps per trawl measure in New Hampshire waters, one buoy line along the northern edge of Georges Bank, and triples in the ''sliver'' area.

Response: The final rule establishes varying trawl lengths (traps per trawl), primarily by distance from shore. These are based on measures proposed by the ALWTRT, states, conservation equivalencies requested, and comments received during scoping and rulemaking. Configurations by distance from shore were considered likely to parallel vessel sizes, with smaller vessels operating closer to shore. Trawling up requirements by vessel size or configuration would be difficult to implement, enforce, and evaluate.

Comment 12.5: NMFS should exempt waters from 50 fathoms (91 m) and deeper along the continental slope from trawling up.

Response: The final rule implements a less restrictive trawling up requirement for vessels fishing in waters deeper than the 50 fathom curve south of Georges Bank (35 traps per trawl) than was initially proposed (45 traps/trawl) in response to conservation equivalency requests from the Atlantic Offshore Lobster Fishermen's Association. There is no information to suggest that right whales and other large whales are not entangled in waters deeper than 50 fathoms therefore an exemption from trawling up requirements without a concurrent line or risk reduction alternative would not provide sufficient risk reduction.

Comment 12.6: NMFS should consider the 3 mile zones around Matinicus and Ragged Islands to be the same as other Maine coastal areas, and regulate them as such.

Response: As noted below in this rule, there is an island buffer for this fishing in waters within ¼ nautical miles of the following Maine islands are exempt from the minimum number of traps per trawl requirement in paragraph (c)(2)(iv) of this section: Monhegan Island, Matinicus Island Group (Metinic Island, Small Green Island, Large Green Island, Seal Island, Wooden Ball Island, Matinicus Island, Ragged Island), and Isles of Shoals Island Group (Duck Island, Appledore Island, Cedar Island, Smuttynose Island).

Comment 12.6: The problem with using only one buoy line is that other fishermen won't be able to tell where my gear is, more catch-downs, and losing the ability to haul in a certain direction because of the wind.

Response: Area-specific allowances of up to ten traps per trawl with one buoy line was requested by Maine DMR, after discussion with the Zone Councils, as a conservation equivalency that would allow fishermen to fish shorter trawls while still reducing the number of buoy lines. Because this change is restricted to Maine Zones at the request of Zone Councils, it may reflect vessel capacity and current fishing practices. However, as occurs whenever measures are modified, there will be a transition period as fishermen adjust to new measures that the fishing community will likely work out relative to issues of gear placement and safety.

Comment 12.7: Trawling up increases chances of gear conflicts due to longer lines.

Response: The impact of minimum trawl length requirements on gear loss in trap/pot fisheries is difficult to predict with confidence. The uncertainty is largely attributable to the array of underlying factors responsible for gear loss. On the one hand, longer trawls may increase the likelihood that groundline will foul on bottom structure, increasing the potential for line to part while hauling traps. Longer trawls may also increase the potential for gear conflicts, particularly situations in which one fisherman's gear is laid across another's. This could be exacerbated by the Maine conservation equivalencies which will allow fishermen in some Maine Lobster Zones to fish trawls of up to 10 traps with only one buoy line. Overlain gear can cause one party to inadvertently sever another's lines, making it impossible to retrieve all or some of the gear. A longer trawl also increases the consequences of such incidents; *i.e.,* the more gear on a single trawl, the more gear is lost when that trawl is rendered irretrievable.

In other ways, trawling requirements may reduce the potential for gear loss. The fundamental objective of longer trawls is to limit the number of buoy lines in the water column and reduce encounters with large whales; such encounters are one possible source of gear loss. Likewise, a decrease in the number of buoy lines may reduce the frequency with which gear is entangled in vessel propellers or mobile fishing gear. Furthermore, in areas where trawling up requirements necessitate addition of a second buoy line (*e.g.,* for configurations greater than 20 traps or a vessel going from triples to ten-trap trawls), the second buoy line may make it easier to locate and retrieve gear when one buoy line is lost. Longer trawls are also heavier and may be less likely to be swept away during extreme storm or tidal events. For more, see FEIS Section 6.2.6.1.

Comment 12.8: NMFS should not leave it to fishermen to develop agreements between large and small boats to set trawl lengths that would meet an overall goal of line reduction, as this would be difficult to evaluate and enforce.

Response: Agreed. The final rule does not implement any regulations based on boat length or size.

Comment 12.9: Trawling up leads to longer, heavier lines that pose a greater risk to right whales, causing worse and heavier entanglements.

Response: While we recognize that the trawls will be longer, for many of the configurations, the portion of the trawl hanging in the water column and putting force on the hauling rope is based on water depth and distance between traps rather than wholly on trawl length and the configuration changes may not substantially change that. Many of the configurations adapted were proposed by fishermen during scoping and were proposed because they can be fished using existing rope and do not require a turnover in buoy lines currently being fished. Finally, every buoy line will be fished with weak insertions or weak rope. In a 2016 study, Knowlton *et al.* showed evidence that 1,700 lb weak links within buoy lines or 1,700 lb weak line will allow whales to part the gear and reduce the likelihood of serious injury. Trawling up reduces the chance of an entanglement as fewer buoy lines will be present in the water column. The combination of these two measures will reduce the threat of mortality and serious injury of entanglement for large whales.

Comment 12.10: Many fishermen voiced safety concerns about trawling up, including not having enough room on their vessel for 45 traps, that the increased weight of the vessel could lead to greater danger of capsizing in bad weather, and that longer lines may injure and entangle the crew.

Response: Throughout the development of the final rule, we have taken safety considerations into account in identifying alternatives. Several proposed measures were rejected in whole or in part due to safety concerns. See Table 3.4. Conservation equivalencies adopted in the final rule better accommodate small scale fishing operations and traditional practices, considers fishing safety concerns, and requires less costly gear modifications.

Comment 12.11: NMFS should require all trap/pot vessels be rigged for trawl nets or aluminum beam trawl type equipment, and cease to allow trap/pot gear with buoy lines.

Response: NMFS does not have the authority under either the ACA or MSA to unilaterally require trawl gear in all fisheries. The ACA directs the Federal government to support the management efforts of the Commission and, to the extent the Federal government seeks to regulate a Commission species, develop regulations that are compatible with the Commission's Interstate Fishery Management Plan and consistent with the MSA's National Standards. The Commission's Interstate Fishery Management Plans for lobster and Jonah crab specifically contemplate the use of trap/pot gear. NMFS would not have the authority to implement a requirement to prohibit trap/pot gear and require trawl gear without such a measure being incorporated into the Interstate Fishery Management Plan and recommended by the Commission. Similarly, the MSA charged regional fishery management councils with developing fishery management plans that meet the requirements of the Act. Under the MSA, the Secretary shall approve, disapprove, or partially approve a plan or management action developed by the Councils. Unless and until the Mid-Atlantic and New England fishery management councils modify gear requirements for their fishery management plans, NMFS is not authorized to take action under the MSA.

Comment 12.12: NMFS should focus on keeping tension in buoy lines and reducing length between surface buoys to 3–4 feet (0.91–1.2 m) to reduce entanglements of all marine mammals.

Response: Documentation from entanglements indicates that buoy lines and unknown lines represent the majority of interactions. Surface system direct interactions are rarely documented.

Current industry practice and the ALWTRP already requires the use of sinking line on the top of buoy lines to reduce floating line at the surface. Under many conditions, fishermen also minimize scope in their buoy lines to prevent the lines from interacting with nearby set gear, although in areas of high tidal range and currents, more scope may be needed.

The final rule reduces the possibility of entanglements by using a combination of closed areas, trawling up (less buoy lines in water column), weak line, weak insertions, and weak contrivances.

13. Weak Rope/Links/Inserts

More than 71 of the unique commenters supported the use of some form of weak rope to reduce the severity of right whale entanglements in fishing gear, while thousands of campaign comments and 144 unique commenters noted that weak rope may not reduce entanglement events and may still have detrimental effects on juveniles and calves, as well as cause sublethal effects to adults. Many fishermen are concerned that weak rope will result in gear loss, which will result in economic losses to them and increase the amount of ghost gear, which poses an entanglement risk to right whales.

Comment 13.1: Many commenters had questions or concerns about weak link locations, configurations, and surface systems.

Response: We received dozens of comments questioning the reasons for locations of the weak links/inserts, suggestions for other configurations of weak points, and the effectiveness of weak links/inserts, particularly the 600 lb (272 kg) weak link, in reducing right whale entanglements. We also received dozens of suggestions for different options for weak links/inserts, including but not limited to, knots, time tension line cutters, loops and tucks, eye splices with sheep bends, and Novabraids. We received several suggestions regarding surface systems, with some commenters suggesting that they be eliminated, others wanting to keep them, and some asking for evidence that they are effective at reducing entanglement.

For reasons specified in FEIS Section 3.3.3, we removed the requirement for lobster and Jonah crab fishermen to connect their buoy to the buoy line using a weak link because the new measures require using weak rope or weak insertions in the buoy line. For our evaluation of surface system weak links, please see FEIS Section 3.3.3.1.

Comment 13.2: Many commenters had questions or concerns about safety and economic loss related to weak inserts, link, or rope. Fishermen were particularly concerned that weak rope and weak inserts may result in injuries to fishermen and economic impacts due to lost gear.

Response: Forces on lines hauling up lobster trawls were measured during commercial operations. Forces greater than 1,700 lb (771.1 kg) breaking strength were required to retrieve gear, particularly for trawls of 35 traps and more in waters greater than 50 fathoms (91.4 m) (Maine DMR 2020). Timed haul data indicated those higher forces were not detected on the line until well past halfway through hauling the buoy line (for example, Figure 7 in Maine proposal, Appendix 3.2). This suggests that under most operational conditions, weak rope or a weak insertion within the top half of a buoy line would not be subjected to forces approaching or greater than 1,700 lb (771.1 kg) during a haul. This is consistent with modeling work conducted by Knowlton *et al.* (2018) who demonstrated that operational changes in fishing practices to minimize speed and the amount of gear in the water column would further minimize rope tensions. In field work conducted by Knowlton *et al.* (2018), gear loss for buoy ropes using Novabraid sleeves inserted every 40 feet throughout the buoy lines fished in waters from 42 to 310 feet (12.8 to 94.5 m) was not significantly different than

gear loss using standard buoy lines. The final rule does not require the configuration studied by Knowlton *et al.* (2018), and while that means that the final configurations do not get the level of risk reduction that would be achieved through their experimental configuration, the measures reduce the likelihood that weak insertions will occur where forces may exceed the breaking strength of the rope. That compromise is intended to minimize safety risks to fishermen and economic impacts of increased gear loss. For more, see FEIS Section 3.3.3.2.

Comment 13.3: Many commenters had questions or concerns about the effects of weak inserts and weak rope on right whales.

Response: Conservationists voiced concerns that weak rope wouldn't reduce the risk of entanglement, and would still cause sublethal effects to adults, and could cause lethal effects to juveniles and calves. There were also suggestions that weak rope will hamper disentanglement teams and could result in more right whale mortalities and serious injuries. Some commenters questioned our analysis of the spacing, particularly concerning why we elected to use weak insertions every 40 feet as equivalent to weak rope.

We evaluated weak line relative to the findings of Knowlton *et al.* (2016), which documented that no ropes retrieved from entangled right whales of all ages had breaking strengths that were below 7.56 kN (1,700 lb). Knowlton *et al.* (2016) suggest that right whales can break free from these weaker ropes before a serious injury occurs. This is consistent with estimates of the force that large whales are capable of applying, based on axial locomotor muscle morphology study conducted by Arthur *et al.* (2015). The authors suggested that the maximum force output for a large right whale is likely sufficient to break line at that breaking strength. That study and others recognized that a whale's ability to break free from an entanglement is also somewhat dependent on the complexity of the entanglement configuration (van der Hoop *et al.* 2017).

The research available suggests that a full-length weak line provides the maximum precautionary benefit to whales (Knowlton *et al.* 2016, DeCew *et al.* 2017). However, when full weak rope is not readily available or when replacement of an entire buoy line is not feasible, weak links are also effective at reducing breaking strength. To evaluate the risk reduction benefit of weak rope alternatives, we compared the relative risk reduction achieved from a rope with one or two weak inserts at particular buoy line depths to a rope with inserts at regular intervals of 40 feet. We selected 40 foot intervals based on the work of Knowlton *et al.* (2016 and 2018) which was selected because it was within the range of a right whale's girth and length, is within the range of rope length typically removed from entangled whales and was the configuration discussed most directly by the Team when considering weak rope. Spacing of every 40 feet provides the greatest benefit to whales, since entanglements can be very complex, and inserts every 40 feet provide the greatest likelihood that at least one weak point will be present on an entangled whale, allowing it to break the rope. Weak line models suggest that weak points will not necessarily benefit a whale that encounters the rope below the weak point, particularly with a heavy trawl. The lower the lowest weak insertions, the higher the potential for the rope to part (DeCew *et al* 2017). See Chapter 3 for a more detailed description of the calculations of the proportional risk reduction estimated for inserts that were not at regular intervals, and how we determined the measures included in the final rule.

We agree that there may be added or reduced risk reduction to whales depending on how weak insertions are configured. The greater the number of weak points on a line, the greater the likelihood that a weak point will be located below where the whale encounters the line, and that there will be a weak insertion outside of the mouth where the whale may have a better chance of breaking free from the entanglement. Configurations that are knot-free may also pose less risk. Gear that is knot-free, and/or free of attachments may be less likely to get caught in baleen if a mouth entanglement occurs, more likely to slide through the whale's baleen without becoming lodged in the mouth or elsewhere, decreasing the risk of serious injury or mortality. However there is evidence that splices and knots introduce weaknesses into buoy lines. Lines undergoing breaking strength testing broke on the smaller or weaker side of a knot or splice (Maine DMR 2020).

We evaluate risk reduction under the assumption that weak rope is not zero risk to whales and that few insertions do not provide the risk reduction benefits of fully weak rope or weak rope with insertions every 40 feet. However, in concert with the other measures in the final rule, NMFS believes that it will achieve the required levels of risk reduction and applies a precautionary measure across the Northeast Region. For more on our analysis, see FEIS Section 3.3.4 and Appendix 3.1.

Comment 13.4: Commenters indicated current buoy weak link requirements should be rescinded. Reasons included: To retain buoy to increase our ability to identify fishery and location of incidents, so buoy drag in concert with weak rope or weak inserts in buoy line can pull parted gear free from whales, to improve visibility to disentanglement teams.

Response: The final rule rescinds buoy weak link requirements for Northeast Region lobster and Jonah crab buoy lines that require weak rope or weak inserts in the buoy line. See Chapter 3 of the FEIS for a discussion of this modification.

Comment 13.5: The weak rope equipment suggested as an alternative in the Proposed Rule has not been proven to effectively reduce harm to right whales. In fact, many fishermen have stated that they will use more rope if the weak rope requirement is implemented, overall increasing the likelihood of entanglements.

Response: For LMA 1 fishermen, the weak rope/weak insertion measures were proposed by Maine DMR after extensive outreach with Maine fishermen. The insertion locations are informed by research done by Maine DMR measuring at what point the forces on rope when trawls are hauled in exceed 1,700 lb (771.1 kg). Insertion locations were selected for placement in the buoy line above that point. Fishermen indicated a preference for a solution that would not require them to purchase additional rope, suggesting that most fishermen do not anticipate purchasing more rope other than the short lengths needed to create weak insertions, adding only a three to six feet to the amount of buoy line already fished.

See FEIS Section 3.3.42, Knowlton *et al.* (2016) and Arthur *et al.* (2015) for evidence indicating large whales including right whales can break free of rope with breaking strengths below 1700 lb, reducing opportunity for serious injury and mortality.

14. Outside Scope

As noted above, we received dozens of comments that were outside the scope of the current rulemaking. The final rule and analyses in the FEIS are related to amendments to the Plan. The Plan and the take reduction process are restricted to the monitoring and management of incidental mortality and serious injury of marine mammals in U.S. commercial fisheries. Because these comments were out of the scope of the final rule and the FEIS, we did

not provide responses in this document. A list of the out of scope comments appears below.

1. NMFS or the states should institute a lobster and crab tax or other funding mechanism to make up for the economic deficit caused by the regulations.

2. The Economic Impact Analysis produced by Nathan Associates incorrectly states that the Casco Bay Lines ferry to Long Island has 24 daily runs year round, casting doubt on NMFS' entire economic analysis.

3. We are concerned that the Agency's broad assumptions may unnecessarily alarm industry members and their families.

4. NMFS should monitor the travel routes of whales and enforce all regulations that might impact whales, such as ocean dumping.

5. NMFS and states should work with manufacturers to produce ropes in a single color to match state requirements, which would reduce the difficulty of maintaining marks at the designated increments for fishermen moving to different depths.

6. NMFS should use emergency action to close all high seas transport to allow right whales to recover.

7. NMFS should not issue incidental take permits for right whales under the ESA.

8. Several commenters submitted recommendations on gillnet and other mobile gear configurations, which are not the subject of this rule, but may be considered by the ALWTRT in the future.

9. Expand and strengthen response networks comprising researchers, environmental organizations, industry groups and stakeholders, and government decision-makers to help manage the crisis and start rebuilding the population.

10. The percentage of vertical lines proposed to be reduced (60 percent up to 98 percent) in the Biological Opinion was not derived based on any scientific findings.

11. NMFS should study the effects of the rebounding white shark populations on the survival of right whale calves.

Classification

NMFS issues this final rule to amend the regulations implementing the Atlantic Large Whale Take Reduction Plan (Plan, ALWTRP). This rule revises the management measures for reducing the incidental mortality and serious injury to the North Atlantic right whale (*Eubalaena glacialis*), as well as to humpback (*Megaptera novaeangliae*) and fin whales (*Balaenoptera physalus*) in commercial trap/pot fisheries in the Northeast Trap/Pot Management Area (Northeast Region). The NMFS Assistant Administrator has determined that this rule is consistent with the Plan and the provisions of the MMPA, as well as the goals of the ESA, the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), and other applicable law.

NMFS prepared an FEIS for this rule. The Notice of Availability published in the **Federal Register** on July 2, 2021 (86 FR 35286). Three alternatives, consisting of a ''No Action'' or status quo alternative (Alternative 1), one Preferred Alternative (Alternative 2) that is implemented by this rule, and one additional alternative (Alternative 3 or Non-preferred Alternative), were analyzed using the NMFS Decision Support Tool, described in detail in Chapter 5 of the FEIS. The biological impact analysis uses both quantitative (produced by the NMFS Decision Support Tool) and qualitative indicators to compare the regulatory alternatives against the 2017 conditions. Impacts on all large whales are analyzed, but the intention of this rulemaking is a 60 to 80 percent risk reduction for right whales to reduce incidental entanglement mortality and serious injury to below the potential biological removal level of 0.8 mortalities and serious injuries a year. The analyses estimate percent reduction in the number of vertical buoy lines and reduction in co-occurrence between whales and buoy lines as proxies for reduced likelihood of encounter and entanglement. Mean line strength, and change in strength and associated gear threat of rope in buoy lines that are weakened, are estimated toward reduction of the likelihood of a serious injury or mortality in the event of an entanglement. The biological analysis estimates the risk reduction contributions of the measures that would require Plan modifications, as well as of ongoing risk reduction measures implemented by states and previous or imminent fishery management rules that reduce effort in the lobster fishery. Note that the economic analysis considers only the costs of the measures that would be implemented through the Federal rulemaking to amend the Plan.

The ''No Action'' alternative (Alternative 1) would result in no changes to the current measures under the Plan. The rate of right whale mortality and serious injuries caused by incidental entanglement in U.S. commercial fisheries would continue to greatly exceed PBR. There would be no additional economic effects on the fishing industry.

Alternative 2, the Preferred Alternative, is implemented in this final rule. It reduces the number of buoy lines fished in the Northeast Region lobster and Jonah trap/pot crab fisheries by increasing the minimum number of traps per trawl based on area fished and miles fished from shore in the Northeast Region. This alternative modifies existing restricted areas from seasonal fishing closures to seasonal closures to fishing with persistent buoy lines, expands the geographic extent of the Massachusetts Restricted Area (MRA) to include Massachusetts state waters north to the New Hampshire border, and establishes two new restricted areas that are seasonally closed to fishing for lobster or Jonah crab with persistent buoy lines. Alternative 2 requires buoy lines to be modified to incorporate rope engineered to break at no more than 1,700 lb (771.1 kg) or weak insertion configurations that break at no more than 1,700 lb (771.1 kg). Finally, the rule requires additional marks on buoy lines to differentiate vertical buoy lines by principal port state, includes unique marks for Federal waters, and expands into areas previously exempt from gear marking.

The Decision Support Tool estimates that Alternative 2 and this rule achieves a 69- to 73-percent risk reduction when the value of the current MRA is included, and a 60-percent risk reduction without the value of the current MRA. This risk reduction is achieved by an estimated seven percent reduction in the number of buoy lines that would be fished in the Northeast Region American lobster and Jonah crab fisheries, a 65-percent reduction in right whale and buoy line co-occurrence (54 percent without including the value of the current MRA), and a weakening of each buoy rope in these fisheries for a nine percent reduction in mean line strength and a 17-percent reduction in gear threat. The first-year costs under Alternative 2 range from $9.8 million to $19.2 million, depending on implementation assumptions (*e.g.,* buoy lines relocated versus buoy lines removed in seasonal restricted areas).

Alternative 3, the Non-preferred Alternative, would reduce the number of buoy lines in Federal waters through the implementation of a buoy line cap allocated at 50 percent of the buoy lines fished in 2017. Like Alternative 2, this alternative would modify existing restricted areas (except the Outer Cape Cod LMA, which is closed for lobster management purposes) from seasonal fishing closures to seasonal closures to fishing with persistent buoy lines. Alternative Three would expand the geographic extent of the MRA to include Massachusetts state waters north to the New Hampshire border and extend the

MRA closure season to include May, with a soft opening if surveys show that whales have left the area. Three new seasonal restricted areas would be established, including an LMA 1 seasonal restricted area with the same boundaries as in the preferred alternative but with a one month extension, a seasonal restricted area in LMA 3 north of Georges Bank, and a South Island Restricted Area smaller than the one in the Preferred Alternative but extended through May. Finally, Alternative 3 would require a large visible mark on the surface system of each buoy line that would incorporate a tape that identifies the permit holder's state and fishery.

The Decision Support Tool estimates that Alternative 3 achieves a 72-percent risk reduction. This risk reduction is achieved by an estimated seven percent reduction in the number of buoy lines that would be fished in the Northeast Region American lobster and Jonah crab trap/pot fisheries, a 60-percent reduction in right whale and buoy line co-occurrence, and a weakening of each buoy rope in these fisheries for a 19-percent reduction in mean line strength and a 29-percent reduction in gear threat. The first-year costs under Alternative 3 range from $32.8 million to $44.6 million, depending on implementation assumptions (buoy lines relocated vs. buoy lines removed).

On August/September XX, 2021, NMFS issued a Record of Decision identifying the selected alternative. A copy of the Record of Decision is available from NMFS (see **ADDRESSES**).

This rule has been determined significant for the purposes of Executive Order 12866.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to assess the economic impacts of their proposed regulations on small entities. The objective of the RFA is to consider the impacts of a rulemaking on small entities, and the capacity of those affected by regulations to bear the direct and indirect costs of regulation. We prepared a final regulatory flexibility analysis (FRFA) in support of this action, as required by section 604 of the RFA. The FRFA consists of the initial regulatory flexibility analysis (IRFA), a statement of the need for, and objectives of, the rule; a summary of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made to the rule as a result of such comments; the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, if any (none were received), and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected; a description of the steps the agency has taken to minimize any additional cost of credit for small entities, and; the agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the **Federal Register** such analysis or a summary thereof.

All of the documents that constitute the FRFA and a copy of the EIS/RIR/FRFA are available upon request (see **ADDRESSES**) or via the internet at: *Fisheries.NOAA.gov/ALWTRP.* Information in the sections above (Background, Comments and Responses, and Changes From the Proposed Rule) summarize information found in the FRFA and will not be repeated here. Additional summary information from the FRFA follows.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

After publication of the proposed rule and DEIS, we received over 1,300 unique submissions and many submissions generated by non-governmental organization campaigns including some submissions with multiple signatures representing over 200,000 people. Three hundred and thirty six unique commenters identified themselves as fishermen, either directly or through context, of which 312 voiced opposition to all or part of the rule, 19 commented on particular provisions, but did not expressly support or oppose, and 5 supported the general idea of the rule, though had specific comments on some measures. Of the ten fishing industry groups, eight opposed all or part of the rule, one gave specific recommendations, but did expressly support or oppose, and one supported the general idea of the rule. State and Federal legislators also commented, including some that opposed the rule or some provisions of the rule. Fifty four unique commenters that identified themselves as members of the public expressed opposition to the rule. A small number suggested that this rule should be withdrawn because it does not provide adequate levels of protection for right whales, and NMFS should start over. A little over 34 percent of commenters opposed the rule in whole or in part, and about 4 percent suggested that the rule should be withdrawn because it does not provide adequate levels of protection for right whales, and NMFS should start over.

Many commenters were concerned that these regulations would have a negative impact on the personal economics of fishermen, as well as the economies of their communities, their counties, and their state. Many commenters from Maine opposed the LMA 1 Seasonal Restricted Area due to economic impacts on their fishing operations, and recommended that if we did implement a seasonal closure to buoy lines there, we should establish a trigger of some sort, such as sightings of right whales, to close the area. Commenters opposing the rule expressed concerns about the safety of using more traps per trawl for their fishing operations and the safety of using weak buoy lines, as well as the potential for increased gear conflict and gear loss. Fishermen also wanted clarity and certainty in the regulations, and many wanted assurances that these regulations should be easy to understand, monitor, and enforce.

There was also strong opposition to any suggestion that fishermen would be required to use ropeless technology, although neither the proposed nor final rule would mandate ropeless fishing. Commenters expressed concerns about the lack of detailed economic analysis of the use of ropeless technology and economic impacts on both trap/pot fisheries and mobile gear fisheries that are not currently Category I and II fisheries managed under the Take Reduction Plan. Finally, Maine DMR, Rhode Island Division of Marine Fisheries, Connecticut and New York Marine Fisheries Programs, the Atlantic Offshore Lobstermen's Association, and other commenters requested

modifications for the final rule to accommodate conservation equivalencies that would achieve the same risk reduction, but better reflect more localized fishing conditions or practices.

Given the vast amount of industry input into the development of weak insertions, which would not require fishermen to replace buoy lines, and trawling up measures, many gear modifications implemented in this final rule were created to control costs. Additionally, a number of modifications to the rule were made in response to these comments, including:

Rather than increase traps fished between buoy lines (trawling up) in southern New England's Lobster Management Area (LMA) 2, the final rule requires additional weak insertions for vessels fishing throughout LMA 2. Analysis indicates this achieves improved risk reduction. This modification was requested in public comments submitted by Rhode Island fishermen and state managers as safer for Rhode Island vessels;

The final rule implements conservation equivalency measures submitted by the Atlantic Offshore Lobstermen's Association, recommending three trawling-up restricted areas where 50, 45, or 35 traps per trawl would be required rather than 45 across the Northeast LMA 3 as conservation equivalencies that accommodate smaller vessels that fish south of Georges Bank. Those requirements were adopted in the final rule after analysis confirmed that the measures achieved similar risk reduction;

The Maine Department of Marine Resources requested extensive modifications by Maine Lobster Management Zones based on their outreach to Maine Zone Councils. The changes modified the trawling up and weak insertion requirements. Most of the requested conservation equivalencies out to 12 miles were adopted in this final rule;

The final rule implements a buoy line closure offshore of Maine in LMA 1 from October through January. The proposed rule requested comments on not closing the area, or closing it after a trigger was reached, but no feasible trigger was offered and the closure is necessary to achieve sufficient risk reduction, and;

The final rule removes a requirement for weak links at the buoy. This measure is not needed for buoy lines that now require weak rope or weak insertions.

See chapter 1 section 1.6 of the FEIS for a full discussion of changes made to the final rule based on new information and comments received during the public comment period and see Comments and Responses or Chapter 1, Appendix 1.1, and Volume 3 of the FEIS for further details on comments on the DEIS and proposed rule. Those comments were aggregated across themes and our responses are not repeated here. All revisions and clarifications to the proposed rule, as well as the rationale for these revisions, are described in Chapter 1 of the FEIS and are not repeated here.

Description and Estimate of the Number of Small Entities to Which the Rule Would Apply

The RFA requires agencies to assure that decision makers consider disproportionate and/or significant adverse economic impacts of their proposed regulations on small entities. The Regulatory Flexibility Act Analysis determines whether the proposed action would have a significant economic impact on a substantial number of small entities. This section provides an assessment and discussion of the potential economic impacts of the proposed action, as required of the RFA.

Section 3 of the Small Business Act defines affiliation as: Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated (13 CFR 121.103(f)). These principles of affiliation allow for consideration of shared interest that does not necessarily require common ownership. However, data are not available to ascertain non-ownership interest so we use an affiliated [6] vessel database created by the Social Sciences Branch (SSB) of the Northeast Fisheries Science Center. There are three major components of this dataset: Vessel affiliation information, landing values by species, and vessel permits. All Federal permitted vessels in the Northeast Region from 2017 to 2019 are included in this dataset where affiliation is determined by unique combinations of owners.

The total number of directly regulated entities is based on permits held. Since the final rule would apply only to the lobster and Jonah crab trap/pot businesses [7] in LMA 1, LMA 2, LMA 3, and OCC, only entities that possess one or more of these permits are evaluated. Then for each affiliation, the revenues from all member vessels of the entity are summed into affiliation revenue in each year. On December 29, 2015, the NMFS issued a final rule establishing a small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for RFA compliance purposes only. The $11 million standard became effective on July 1, 2016. Thus, the RFA defines a small business in the lobster fishery as a firm that is independently owned and operated with receipts of less than $11 million annually. Based on this size standard, the three-year average (2017–2019) affiliation revenue is greater than $11 million, the fishing business is considered a large entity, otherwise it is a small entity. Then we determine the number of impacted entities by examining the landing values of lobster. If one or more members of the affiliation landed lobster in 2019, this business will be considered an impacted entity in our analysis.

Regulated entities in this rulemaking include both entities with Federal lobster permits and lobster vessels that only fish in state managed waters except for the exempted areas in Maine. Using vessel data from Vertical Line Model developed by the Industrial Economics (see Appendix 5.1 of FEIS for documentation), we identify 1,913 vessels that fished only in state waters outside Maine exempted areas. Due to the lack of owner and landing information of these vessels, we could not provide detailed analysis but have to assume all to be small entities. Using Federal permit data, there are 1,547 distinct entities identified as directly regulated entities in this action, those that held lobster permits in LMA 1, 2, 3, or OCC, or some combination. So all together, 3,460 entities are regulated under this action. Table 1 displays the details of regulated entities holding Federal permits. Of all 1,547 entities, only two of them are large. Within the 1,545 small entities, 262 had no earned revenue from fishing activity even though they had a lobster permit. Because they had no revenue, they would be considered small by default. Among the 1,283 small entities with fishing revenue, 110 entities had no lobster landings. Therefore, 3,086 small

[6] We use terms affiliation, fishing business and entity interchangeably in this section.

[7] During the time period of our analysis (2017–2019), no specific permit was needed to fish for Jonah crab. Beginning on December 12, 2019, only vessels that have a federal American lobster trap or non-trap permit may retain Jonah crabs.

entities would be considered as impacted small entities during this rulemaking. The average gross annual revenue for small entities with lobster landings was $287,000 in 2019, and 91.5 percent of that is from lobsters. For small entities without lobster landings, their annual gross revenue was $135,000. The average revenue for all small entities was about $252,000. The revenue of large entities are not reported here for data confidentiality reasons.

TABLE 7—THE NUMBER OF REGULATED ENTITIES WITH FEDERAL PERMITTED VESSELS AND THEIR LOBSTER LANDING VALUE PERCENTAGE OF ANNUAL GROSS REVENUE IN 2019

[In 2020 U.S. $]

	Large entity (E)	Lob % revenue large E	Average revenue large E	Small entity	Lob % revenue small E	Average revenue small E	Total entities
Fishing with Lobster Landing	2	83.9%	N/A	1,173	91.5%	$287,000	1,175
Fishing Without Lobster Landing	0	0	N/A	110	0	135,000	110
No revenue	0	0	N/A	262	0	0	262
Total Entities	2		N/A	1,545		252,000	1,547

Notes: 1. The determination of large or small entity is based on three-year average affiliation revenue from 2017 to 2019. Lobster landing percentage is calculated using only 2019 data.
2. Gross annual average revenue for large entities are not reported here due to confidentiality concern.
Source: Social Science Branch vessel affiliation data, 2017–2019.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, an outreach document that serves as a small entity compliance guide was prepared. Copies of this final rule are available from the Greater Atlantic Regional Fisheries Office (GARFO), and the compliance guide will be sent to all holders of permits for the lobster fishery in the Northeast Region. The compliance guide and this final rule will be posted on the Plan web page at *Fisheries.NOAA.gov/ALWTRP.*

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

NMFS determined a 60- to 80-percent risk reduction was necessary to reduce mortality and serious injury in the American lobster and Jonah crab commercial fisheries to below PBR. Where risk reduction benefits were equal and where safety, capacity, economic, or operational constraints were better served, conservation equivalencies requested through public comments on the DEIS and proposed rule to mitigate those concerns were accepted and are included in this final rule. These include conservation equivalencies in Maine LMA 1 waters, LMA 2 and LMA 3 waters. To enable the Maine LMA 1 conservation equivalencies, this rule also modifies regulations implementing the Atlantic Coastal Fisheries Cooperative Management Act at 50 CFR 697.21(b)2), increasing the maximum number of traps on a trawl with a single buoy line from three to ten in some Maine Zones. This would allow vessel operators to trawl up to a 20-trap trawls or to use two 10-trap trawls with one buoy line. Additional changes made to accommodate conservation equivalency measures offered by the Maine Department of Marine Resources and supported by commenters from the Maine fishing industry, including modifications to the number of traps on a trawl or the number of weak insertions based on Maine fishery zones and distance from shore out to 12 nm (22.2 km). This rule also implements conservation equivalency recommendations submitted by Rhode Island and supported by Rhode Island fishermen, modifying the LMA 2 measures with more expansive weak insert requirements throughout the LMA rather than trawling up requirements that challenged the capacity of some Rhode Island vessels. Additionally, this rule implements some of the conservation equivalency recommendations submitted by the Atlantic Offshore Lobstermen's Association as public comments on the DEIS and Proposed Rule for LMA 3. This rule implements three management areas in LMA 3 with three different trawling up requirements, requiring more traps/trawl in the Georges Basin area where there is more risk to right whales. This increase in number of traps per trawl of Georges Basin was offset by a lower number of traps required within the Northeast Region south of the 50 fathom (91.4 m) depth contour on the south end of Georges Bank.

All these conservation equivalencies were created with input from fishermen from these areas, informed by their knowledge of measures that would best fit their economic, operational or safety needs. For LMA 2 vessels, the weak rope alternative implemented has less impact on catch and landings and therefore could have a lower economic impact compared to the LMA 2 measures analyzed in the IRFA.

This rule also modifies existing seasonal restricted areas that were closed to lobster and Jonah crab trap/pot fishing to allow ropeless fishing with exempted fishing permits (EFP). Under a revised restricted area definition, trap/pot fishermen could fish with trap/pot gear using ''ropeless'' methods, although an EFP would be required to exempt fishermen from surface marking requirements under other laws. Since 2018, NOAA has invested a substantial amount of funding in the industry's development of ropeless gear, in specific geographic areas and in general. We anticipate that these efforts to facilitate and support the industry's development of ropeless gear would continue, pending appropriations, and would be essential to defray costs for early adopters.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This final rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA), specifically the marking of fishing gear. This rule changes the existing requirements for the collection of information 0648–0364 by modifying gear marking for all buoy lines with the exemption of those fishing in Maine exempted waters in the Northeast Region Trap/Pot Management Area. As described in this preamble, mark colors will be changed for vessels identifying principal ports from Maine through Rhode Island to state-specific marks. Under the new marking scheme, a large 3-foot (91-cm) mark would be required within the top 2 fathoms (60.96 cm) of the buoy in state and Federal waters. Within state waters, at least two additional 12-inch (30.5-cm) marks would be required in the top and bottom of the main buoy line. In Federal waters, at least three 12-inch (30.5-cm) marks would be required at the top, middle, and bottom of the main buoy line. In Federal waters, an additional 12-inch (30.5 cm) green mark is required within 6 inches (15.25 cm) of each state specific mark (at least four in total, including the large mark in the surface system and at least three marks in the main buoy line). Each color mark must be permanently affixed on or along the line, and each color mark must be clearly visible when the gear is hauled or removed from the water. Paint and tape will be required for the surface system marks, and the commonly used colored ties and twine can be used within the main buoy lines. The changes from current gear marking include: The state color, the addition of a surface system mark, one less mark required in the main buoy line in state waters, and four additional marks required to distinguish Federal waters. While Maine fishermen in non-exempt state waters have already marked their gear under Maine regulations, we include the costs of that effort in our calculation in response to comments that noted that the Maine regulations were implemented in anticipation of this rule. Additionally, we had previously assumed that about 20 percent of the gear marks were reapplied each year, but new information suggests they are applied annually. Using these assumptions, the public reporting burden for the Northeast Region lobster and Jonah crab gear marking requirements are estimated to affect 3,970 vessels that need to remark an average of 389 marks each year. Each mark takes between approximately 6.7 and 8.6 minutes to apply, depending on the size of the mark and method used. Applying the annual hourly wage rate for fishermen of $26.5 results in a total estimated annual wage burden cost of $4.5 to 5.9 million dollars.

We invite the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Written comments and recommendations for this information collection should be submitted at the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by using the search function and entering either the title of the collection or the OMB Control Number 0648–0364.

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.

Consistency With Coastal Zone Management Act

NMFS has determined that this action is consistent to the maximum extent practicable with the approved coastal management programs of the U.S. Atlantic coastal states affected by the action. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. New Hampshire and Rhode Island agreed with NMFS' determination. Maine and Massachusetts did not respond; therefore, consistency is inferred.

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List of Subjects

50 CFR Part 229

Administrative practice and procedure, Confidential business information, Endangered Species, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

50 CFR Part 697

Fisheries, Fishing.

Dated: August 30, 2021.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 229 and 697 are amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

■ 1. The authority citation for 50 CFR part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.;* § 229.32(f) also issued under 16 U.S.C. 1531 *et seq.*

■ 2. In § 229.2, add definitions for ''Lobster Management Area,'' ''Greater Atlantic Regional Administrator'' and ''Surface system'' in alphabetical order to read as follows:

§ 229.2 Definitions.

* * * * *

Lobster Management Area as used in this part means the management areas defined in the American Lobster Fishery regulations found at 50 CFR 697.18.

* * * * *

Greater Atlantic Regional Administrator as used in this part, means the Regional Administrator for the regional fisheries office of the National Oceanic and Atmospheric Administration for the large marine ecosystem from Maine to Cape Hatteras, North Carolina directed from the Regional Office in Gloucester, Massachusetts.

* * * * *

Surface system, with reference to trap/pot and fixed gillnet gear, includes the components at the sea surface to identify the presence of stationary bottom fishing gear, and includes buoys, radar reflectors, and high flyers.

* * * * *

■ 3. Revise § 229.32 to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

(a) *Purpose and scope*—(1) *Whales and fixed gear fisheries.* The purpose of this section is to implement the Atlantic Large Whale Take Reduction Plan to reduce incidental mortality and serious injury of fin, humpback, and right whales in specific Category I and Category II commercial fisheries from Maine through Florida. Specific Category I and II commercial fisheries within the scope of the Plan are identified and updated in the annual List of Fisheries. The measures identified in the Atlantic Large Whale Take Reduction Plan are also intended to benefit minke whales, which are not designated as a strategic stock, but are known to be taken incidentally in gillnet and trap/pot fisheries. The gear types affected by this plan include gillnets (*e.g.,* anchored, drift, and shark) and traps/pots. The Assistant Administrator may revise the

requirements set forth in this section in accordance with paragraph (i) of this section;

(2) *Regulated waters*—(i) *U.S. Atlantic waters.* The regulations in this section apply to all U.S. waters in the Atlantic except for the areas exempted in paragraph (a)(3) of this section;

(ii) *Northeast Region.* The Northeast Region referred to in paragraphs (b)(1) (b)(2)(i), (b)(3), and (c)(2)(iv) of this section applies to ocean waters within an area bounded on the west by land or by a rhumb line from 41°18.2′ N lat., 71°51.5′ W long. (Watch Hill Point, RI) and on the south by the 40°00′ N lat. line running east to the EEZ line, and bounded on the east by the EEZ north to the U.S./Canada border except for the areas and specific purposes exempted in paragraph (a)(3) of this section; and

(iii) *Six-mile line.* The six-mile line referred to in paragraph (c)(2)(iv) of this section is a line connecting the following points (Machias Seal to Provincetown):

Table 1 to Paragraph (a)(2)(iii)

44°31.98′ N lat., 67°9.72′ W long. (Machias Seal)
44°3.42′ N lat., 68°10.26′ W long. (Mount Desert Island)
43°40.98′ N lat., 68°48.84′ W long. (Matinicus)
43°39.24′ N lat., 69°18.54′ W long. (Monhegan)
43°29.4′ N lat., 70°5.88′ W long. (Casco Bay)
42°55.38′ N lat., 70°28.68′ W long. (Isle of Shoals)
42°49.53′ N lat., 70°32.84′ W long.
42°46.74′ N lat., 70°27.70′ W long.
42°44.18′ N lat., 70°24.91′ W long.
42°41.61′ N lat., 70°23.84′ W long.
42°38.18′ N lat., 70°24.06′ W long.
42°35.39′ N lat., 70°25.77′ W long.
42°32.61′ N lat., 70°27.91′ W long.
42°30.00′ N lat., 70°30.60′ W long.
42°17.19′ N lat., 70°34.80′ W long.
42°12.48′ N lat., 70°32.20′ W long.
42°12.27′ N lat., 70°25.98′ W long.
42°11.62′ N lat., 70°16.78′ W long.
42°12.27′ N lat., 70°10.14′ W long.
42°12.05′ N lat., 70°54.26′ W long.
42°11.20′ N lat., 70°17.86′ W long.
42°09.55′ N lat., 69°58.80′ W long. (Provincetown)

(iv) *Maine pocket waters.* The pocket waters referred to in paragraph (c)(2)(iv) of this section are defined as follows:

Table 2 to Paragraph (a)(2)(iv)

West of Monhegan Island in the area north of the line 43°42.17′ N lat., 69°34.27′ W long. and 43°42.25′ N lat., 69°19.3′ W long.

East of Monhegan Island in the area located north of the line 43°44′ N lat., 69°15.08′ W long. and 43°48.17′ N lat., 69°8.02′ W long.

South of Vinalhaven Island in the area located west of the line 43°52.31′ N lat., 68°40′ W long. and 43°58.12′ N lat., 68°32.95′ W long.

South of Bois Bubert Island in the area located northwest of the line 44°19.27′ N lat., 67°49.5′ W long. and 44°23.67′ N lat., 67°40.5′ W long.

(v) *Maine Lobster Management Zones:* The Maine Zones referred to in paragraph (c)(2)(iv) of this section include waters seaward of the Maine Exempted Waters referred to in paragraph (a)(3)(ii)(A) of this section as managed in eight Zones defined by Maine DMR. The Zones are bounded northeast by the U.S./Canada EEZ International Boundary line, offshore by the Lobster Management Area (LMA) boundary where LMA 1 meets the border of LMA 3 (LMA 1/LMA 3 boundary), and to the west by a boundary proceeding offshore from the Maine/New Hampshire state line. Individual Zone boundaries are defined as follows:

TABLE 3 TO PARAGRAPH (a)(2)(v)

Maine lobster management zone	Description
A—East	The eastern and offshore boundary of Zone A East follows the International Boundary line between Canada and the United States (Maine) extending to and following the Exclusive Economic Zone boundary to approximately 44°8′ N lat., 67°18.00′ W long. The western boundary runs from that point due north along the 67°18.00′ W long. line to Cross Island, Maine.
A—West	The eastern boundary of Zone A West is the western boundary of Zone A East. The western boundary of Zone A West follows: A line running from the Southern tip of Schoodic Point at 44°19.90′ N lat., and 68°03.61′ W long. and running south southeast to the LMA1/LMA3 border at 43°45.43′ N lat. and 67°50.12′ W long. The offshore boundary is the LMA1/LMA3 boundary.
B	The eastern boundary of Zone B is the western boundary of Zone A West. The western boundary follows a line that starts at the southernmost end of Newbury Neck following a straight line connecting the points as follows: 44°13.7′ N lat, 68°27.8 W long. (a point ¼ mile due east of Pond Island), then to the easternmost point of Black Island then to the navigation buoy R ''8'' at the western entrance of York Narrows then south to Swans Island Head then continuing along the southwestern shore of Swans Island to West Point then following the western boundary of the Swans Island Lobster Conservation Area southerly to a point at 44° 01.9′ N lat, 68°28.6′ W long, then SSE to 43°32.66′ N lat., 68°17.28′ W long. where it intersects the LMA1/LMA3 boundary. The offshore boundary is the LMA1/LMA3 boundary.
C	The eastern boundary of Zone C is the western boundary of Zone B. The western boundary runs along a line connecting the points as follows: 44°18.72′ N lat., 68°49.61′ W long. (Head of the Cape, Cape Rosier), SSW to 44°10.49′ N lat., 68°55.57′ W long., SW to 44°06.14′ N lat, 69°00.00′ W long., S to 44°04.51′ N lat., 69°00.01′ W long., SSE to 44° 00.79′ N lat., 68°59.48′ W long., SSE to 43°58.01′ N lat., 68°58.02′ W long., WSW to 43°57.82′ N lat., 68° 58.69′ W long., SSW to 43°56.86′ N lat., 68°58.85′ W long., SE to 43°55.30′ N lat., 68°55.00′ W long., WSW to 43°54.27′ N lat., 68°58.33′ W long., S to 43°51.00′ N lat., 68°58.31′ W long., W to 43°51.00′ N lat., 69°00.11′ W long., SSE to 43°46.57′ N lat., 68°59.30′ W long., SW to 43°44.88′ N lat., 69°01.97′ W long., SE to 43°35.08′ N lat., 68° 50.08′ W long., S to 43°19.63′ N lat., 68° 44.255′ W long. where it intersects the LMA1/LMA3 boundary. The offshore boundary is the LMA1/LMA3 boundary.
D	The eastern boundary of Zone D runs along the points as follows:

TABLE 3 TO PARAGRAPH (a)(2)(v)—Continued

Maine lobster management zone	Description
	44° 18.72′ N, 068° 49.61′ W (Head of the Cape, Cape Rosier), SSW to 44° 10.492′ N, 068° 55.574′ W, SW to 44° 06.136′ N, 069° 00.000′ W, S to 44° 04.506′ N, 069° 00.014′ W, SSE to 44° 00.788′ N, 068° 59.475′ W, SSE to 43° 58.011′ N, 068° 58.023′ W, ENE to 43° 58.194′ N, 068° 57.381′ W, SSE to 43° 57.309′ N, 068° 57.226′ W, SE to 43° 55.688′ N, 068° 53.662′ W, WSW to 43° 55.285′ N, 068° 55.000′ W, WSW to 43° 54.265′ N, 068° 58.330′ W, S to 43° 50.997′ N, 068° 58.313′ W, W to 43° 51.001′ N, 069° 00.107′ W, SSE to 43° 46.565′ N, 068° 59.298′ W, NE to 43° 47452′ N, 068° 57.853′ W, SE to 43° 44.669′ N, 068° 54.350′ W, S to 43°19.63′ N lat., 68° 44.255′ W long. where it intersects the LMA1/LMA3 boundary.
	The western boundary of Zone D starts at the southern tip of Pemaquid Point, SSW and follows a line connecting the points as follows:
	43°48.1′ N lat, 69°30′W long., S to 43°39.0′ N lat, 69°30.0′ W long., S to 43°02.57′ N lat, 69°16.43′ W long., to where it intersects the LMA1/LMA3 boundary.
	The offshore boundary is the LMA1/LMA3 boundary.
E	The eastern boundary of Zone E is the western boundary of Zone C.
	The western boundary of Zone E begins at Newbury Point in Small Point Harbor, Phippsburg and follows a line connecting the points as follows:
	SSW to N″2′, SSE to ‘‘2BH’’, S to 43°38.73′ N lat., 69°49.95′ W long., along the 3 mile line to 43°38.87′ N lat., 69°48.82′ W long, S to 42°53.51′ N lat., 69° 32.18′ W long., where it intersects the LMA1/LMA3 boundary.
	The offshore boundary is the LMA1/LMA3 boundary.
F	The eastern boundary of Zone F is the western boundary of Zone E.
	The western boundary of Zone F runs in a straight line from the active Lighthouse at Two Lights Cape Elizabeth and follows a line connecting the points as follows:
	43°31.80′ N lat. 70°08.56′ W long. near the C ‘‘1’’ East Hue & Cry buoy, WSW to 43°29.28′ N lat, 70°11.77′ W long., S to 42°36.22′ N lat. 69°52.66′ W long, where it intersects the southeastern apex of Zone G. From this point, Zone F boundary follows a straight line southeast to 42°29.85′ N − 69° 40.08′ W where it meets the LMA1/LMA3 boundary.
	The offshore boundary is the LMA1/LMA3 boundary.
G	The eastern boundary of Zone G is as follows:
	43° 41.550′ N, 070° 14.650′ W, SSE 159° Magnetic to 43° 32.875′ N, 070° 05.920′ W, SSE to 42° 31.50′ N, − 69° 43.34′ W where it meets with the southwestern boundary of Zone F.
	The western boundary of Zone G is the seaward extension of the Maine—NH border and follows a line connecting the points as follows:
	43°02.62′ N lat. 70°42.1′ W long., to 42°58.92′ N lat., 70°37.65′ W long., to 42°58.75′ N lat., 70°36.72′ W long., to where it intersects with the western Zone F boundary.

(3) *Exempted waters*—(i) *COLREGS demarcation line.* The regulations in this section do not apply to waters landward of the 72 COLREGS demarcation lines (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80 with the exception of the COLREGS lines for Casco Bay (Maine), Portsmouth Harbor (New Hampshire), Gardiners Bay and Long Island Sound (New York), and the state of Massachusetts;

(ii) *Other exempted waters*—(A) *Maine.* The regulations in this section do not apply to waters landward of a line connecting the following points (Quoddy Narrows/U.S.-Canada border to Odiornes Pt., Portsmouth, New Hampshire):

Table 4 to Paragraph (a)(3)(ii)(A)

44°49.67′ N lat., 66°57.77′ W long. (R N ‘‘2’’, Quoddy Narrows)
44°48.64′ N lat., 66°56.43′ W long. (G ‘‘1’’ Whistle, West Quoddy Head)
44°47.36′ N lat., 66°59.25′ W long. (R N ‘‘2’’, Morton Ledge)
44°45.51′ N lat., 67°02.87′ W long. (R ‘‘28M’’ Whistle, Baileys Mistake)
44°37.70′ N lat., 67°09.75′ W long. (Obstruction, Southeast of Cutler)
44°27.77′ N lat., 67°32.86′ W long. (Freeman Rock, East of Great Wass Island)
44°25.74′ N lat., 67°38.39′ W long. (R ‘‘2SR’’ Bell, Seahorse Rock, West of Great Wass Island)
44°21.66′ N lat., 67°51.78′ W long. (R N ‘‘2’’, Petit Manan Island)
44°19.08′ N lat., 68°02.05′ W long. (R ‘‘2S’’ Bell, Schoodic Island)
44°13.55′ N lat., 68°10.71′ W long. (R ‘‘8BI’’ Whistle, Baker Island)
44°08.36′ N lat., 68°14.75′ W long. (Southern Point, Great Duck Island)
43°59.36′ N lat., 68°37.95′ W long. (R ‘‘2’’ Bell, Roaring Bull Ledge, Isle Au Haut)
43°59.83′ N lat., 68°50.06′ W long. (R ‘‘2A’’ Bell, Old Horse Ledge)
43°56.72′ N lat., 69°04.89′ W long. (G ‘‘5TB’’ Bell, Two Bush Channel)
43°50.28′ N lat., 69°18.86′ W long. (R ‘‘2 OM’’ Whistle, Old Man Ledge)
43°48.96′ N lat., 69°31.15′ W long. (GR C ‘‘PL’’, Pemaquid Ledge)
43°43.64′ N lat., 69°37.58′ W long. (R ‘‘2BR’’ Bell, Bantam Rock)
43°41.44′ N lat., 69°45.27′ W long. (R ‘‘20ML’’ Bell, Mile Ledge)
43°36.04′ N lat., 70°03.98′ W long. (RG N ‘‘BS’’, Bulwark Shoal)
43°31.94′ N lat., 70°08.68′ W long. (G ‘‘1’’, East Hue and Cry)
43°27.63′ N lat., 70°17.48′ W long. (RW ‘‘WI’’ Whistle, Wood Island)
43°20.23′ N lat., 70°23.64′ W long. (RW ‘‘CP’’ Whistle, Cape Porpoise)
43°04.06′ N lat., 70°36.70′ W long. (R N ‘‘2MR’’, Murray Rock)
43°02.93′ N lat., 70°41.47′ W long. (R ‘‘2KR’’ Whistle, Kittery Point)
43°02.55′ N lat., 70°43.33′ W long. (Odiornes Pt., Portsmouth, New Hampshire)

(B) *New Hampshire.* New Hampshire state waters are exempt from the minimum number of traps per trawl requirement in paragraph (c)(2)(iv) of this section. Harbor waters landward of the following lines are exempt from all the regulations in this section;

Table 5 to Paragraph (a)(3)(ii)(B)

A line from 42°53.691′ N lat., 70°48.516′ W long. to 42°53.516′ N lat., 70°48.748′ W long. (Hampton Harbor)

A line from 42°59.986′ N lat., 70°44.654′ W long. to 42°59.956′ N, 70°44.737′ W long. (Rye Harbor)

(C) *Rhode Island.* Rhode Island state waters are exempt from the minimum number of traps per trawl requirement in paragraph (c)(2)(iv) of this sectioN Harbor waters landward of the following lines are exempt from all the regulations in this section;

Table 6 to Paragraph (a)(3)(ii)(C)

A line from 41°22.441′ N lat., 71°30.781′ W long. to 41°22.447′ N lat., 71°30.893′ W long. (Pt. Judith Pond Inlet)

A line from 41°21.310′ N lat., 71°38.300′ W long. to 41°21.300′ N lat., 71°38.330′ W long. (Ninigret Pond Inlet)

A line from 41°19.875′ N lat., 71°43.061′ W long. to 41°19.879′ N lat., 71°43.115′ W long. (Quonochontaug Pond Inlet)

A line from 41°19.660′ N lat., 71°45.750′ W long. to 41°19.660′ N lat., 71°45.780′ W long. (Weekapaug Pond Inlet)

A line from 41°26.550′ N lat., 71°26.400′ W long. to 41°26.500′ N lat., 71°26.505′ W long. (Pettaquamscutt Inlet)

(D) *New York.* The regulations in this section do not apply to waters landward of a line that follows the territorial sea baseline through Block Island Sound (Watch Hill Point, RI, to Montauk Point, NY);

(E) *Massachusetts.* The regulations in this section do not apply to waters landward of the first bridge over any embayment, harbor, or inlet in Massachusetts. The following Massachusetts state waters are exempt from the minimum number of traps per trawl requirement in paragraph (c)(2)(iv) of this section:

(*1*) *Exempt waters of Massachusetts Bay and Outer Cape.* Heading From the New Hampshire border to 70° W longitude south of Cape Cod, waters in EEZ Nearshore Management Area 1 and the Outer Cape Lobster Management Area (as defined in the American Lobster Fishery regulations under § 697.18 of this title), from the shoreline to 3 nautical miles from shore, and including waters of Cape Cod Bay southeast of a straight line connecting 41° 55.8′ N lat., 70°8.4′ W long. and 41°47.2′ N lat., 70°19.5′ W long.; and

(*2*) *Exempt waters of southern Massachusetts.* Heading From 70° W longitude south of Cape Cod to the Rhode Island border, all Massachusetts state waters in EEZ Nearshore Management Area 2 and the Outer Cape Lobster Management Area (as defined in the American Lobster Fishery regulations 50 CFR 697.18), including Federal waters of Nantucket Sound west of 70° W long.;

(F) *South Carolina.* The regulations in this section do not apply to waters landward of a line connecting the following points from 32°34.717′ N lat., 80°08.565′ W long. to 32°34.686′ N lat., 80°08.642′ W long. (Captain Sams Inlet);

(4) *Sinking groundline exemption.* The fisheries regulated under this section are exempt from the requirement to have groundlines composed of sinking line if their groundline is at a depth equal to or greater than 280 fathoms (1,680 feet or 512.1 m);

(5) *Net panel weak link and anchoring exemption.* The anchored gillnet fisheries regulated under this section are exempt from the requirement to install weak links in the net panel and anchor each end of the net string if the float-line is at a depth equal to or greater than 280 fathoms (1,680 feet or 512.1 m); and

(6) *Island buffer.* Those fishing in waters within ¼ nautical miles of the following Maine islands are exempt from the minimum number of traps per trawl requirement in paragraph (c)(2)(iv) of this section: Monhegan Island, Matinicus Island Group (Metinic Island, Small Green Island, Large Green Island, Seal Island, Wooden Ball Island, Matinicus Island, Ragged Island), and Isles of Shoals Island Group (Duck Island, Appledore Island, Cedar Island, Smuttynose Island).

(b) *Gear marking requirements*—(1) *Specified area*s Fishermen permitted by Maine, New Hampshire, Massachusetts, Rhode Island, and NMFS to fish for lobster and Jonah crab using trap/pot gear in the Northeast Region will follow the color marking requirements for Federal waters as indicated in paragraph (b)(2) of this section and, except for when fishing in LMA3, will follow the color code scheme assigned to their state, indicated in paragraph (b)(3) of this section. For all other trap/pot and gillnet gear, excluding shark gillnet, the following areas are specified for gear marking purposes: Northern Inshore State Trap/Pot Waters, Cape Cod Bay Restricted Area, Massachusetts Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Northern Nearshore Trap/Pot Waters Area, Great South Channel Restricted Trap/Pot Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, Southern Nearshore Trap/Pot Waters Area, Offshore Trap/Pot Waters Area, Other Northeast Gillnet Waters Area, Mid/South Atlantic Gillnet Waters Area, Other Southeast Gillnet Waters Area, Southeast U.S. Restricted Areas, and Southeast U.S. Monitoring Area;

(i) *Jordan Basin.* The Jordan Basin Restricted Area is bounded by the following points connected by straight lines in the order listed:

TABLE 7 TO PARAGRAPH (b)(1)(i)

Point	N Lat.	W Long.
JBRA1	43°15′	68°50′
JBRA2	43°35′	68°20′
JBRA3	43°25′	68°05′
JBRA4	43°05′	68°20′
JBRA5	43°05′	68°35′
JBRA1	43°15′	68°50′

(ii) *Jeffreys Ledge Restricted Area.* The Jeffreys Ledge Restricted Area is bounded by the following points connected by a straight line in the order listed:

TABLE 8 TO PARAGRAPH (b)(1)(ii)

Point	N Lat.	W Long.
JLRA1	43°15′	70°25′

TABLE 8 TO PARAGRAPH (b)(1)(ii)—Continued

Point	N Lat.	W Long.
JLRA2	43°15′	70°00′
JLRA3	42°50′	70°00′
JLRA4	42°50′	70°25′
JLRA1	43°15′	70°25′

(2) *Markings.* All specified gear in specified areas must be marked with the color code shown in paragraph (b)(3) of this section. The color must be permanently marked on or along the rope or ropes specified under paragraphs (b)(2)(i) through (iv) of this section. Each colored mark must be clearly visible when the gear is hauled or removed from the water, including if the color of the rope is the same as or similar to the respective color code;

(i) *Northeast Region lobster and Jonah crab buoy line markings.* Beginning May 1, 2022, for all Federal and state Northeast Region lobster and Jonah crab trap/pot gear regulated under this section, the buoy lines must be marked with a solid mark at least 36 inches (91.4 cm) in length within 2 fathoms (3.7 m) of the surface buoy. When fishing in Federal waters, all Northeast Region lobster and Jonah crab trap/pot buoy lines must have an additional green mark of at least 12 inches (30.5 cm) in length no more than 6 inches (15.2 cm) from the 36-inch (91.4 cm) mark. These long marks within 2 fathoms (3.7 m) of the buoy must be solid marks that may be applied with dyed, painted, or heat-shrink tubing, insertion of a colored rope or braided sleeve, or the line may be marked as approved in writing by the Greater Atlantic Regional Administrator. When fishing in state waters, the buoy line below the surface system must be marked by the principal port state color at least two additional times (top half, bottom half) and each mark must at least total 12 inches (30.5 cm) for a total of at least three marks in state waters. For dual permitted vessels, state regulations will determine whether green Federal markings in the surface system and buoy line below the surface system can remain on gear being fished in state waters. When in Federal waters, the buoy line below the surface system must be marked at least three additional times (top, middle, and bottom) with the state or LMA 3 specific color, and each mark must total at least 12 inches (30.5 cm) in length. An additional green mark of at least 12 inches (30.5 cm) in length denoting Northeast Region Federal waters must be placed within 6 inches (15.2 cm) of each area-specific colored mark for a total of at least eight marks in Federal waters. In marking or affixing the color code(s) for the 1-foot buoy line marks for gear regulated under this paragraph (b)(2)(i), the line may be: Dyed; painted, marked with thin colored whipping line, thin colored plastic, or heat-shrink tubing; spliced in insertion of a colored rope or braided sleeve or other material, or a thin line may be woven into or through the line; or the line may be marked as approved in writing by the Greater Atlantic Regional Administrator. An outreach guide illustrating the techniques for marking gear is available from the Greater Atlantic Regional Administrator upon request and posted on the Atlantic Large Whale Take Reduction Plan website at *Fisheries.NOAA.gov/ALWTRP;*

(ii) *Other buoy line markings.* For all other trap/pot and gillnet gear regulated under this section, the buoy line must be marked at least three times (top, middle, bottom) and each mark must total at least 12 inches (30.5 cm) in length. If the mark consists of two colors, then each color mark may be at least 6 inches (15.2 cm) for a total mark of 12 inches (30.5 cm). In marking or affixing the color code for gear regulated under this paragraph (b)(2)(ii), the line may be: Dyed, painted, marked with thin colored whipping line, thin colored plastic, or heat-shrink tubing, spliced in insertion of a colored rope or braided sleeve or other material, or a thin line may be woven into or through the line, or the line may be marked as approved in writing by the Greater Atlantic Regional Administrator. An outreach guide illustrating the techniques for marking gear is available from the Greater Atlantic Regional Administrator upon request and posted on the Atlantic Large Whale Take Reduction Plan website at *Fisheries.NOAA.gov/ALWTRP;*

(iii) *Net panel markings.* Shark gillnet gear net panels in the Southeast U.S. Restricted Area S, Southeast U.S. Monitoring Area and Other Southeast Gillnet Waters are required to be marked. The net panel must be marked along both the floatline and the leadline at least once every 100 yards (91.4 m);

(iv) *Surface buoy markings.* Trap/pot and gillnet gear regulated under this section must mark all surface buoys to identify the vessel or fishery with one of the following: The owner's motorboat registration number, the owner's U.S. vessel documentation number, the Federal commercial fishing permit number, or whatever positive identification marking is required by the vessel's home-port state. When marking of surface buoys is not already required by state or Federal regulations, the letters and numbers used to mark the gear to identify the vessel or fishery must be at least 1 inch (2.5 cm) in height in block letters or Arabic numbers in a color that contrasts with the background color of the buoy. An outreach guide illustrating the techniques for marking gear is available from the Greater Atlantic Regional Administrator upon request and posted on the Atlantic Large Whale Take Reduction Plan website *Fisheries.NOAA.gov/ALWTRP;*

(3) *Color code.* Gear must be marked with the appropriate colors to designate gear types and areas as follows:

TABLE 9 TO PARAGRAPH (b)(3)

Color code scheme	
Plan management area	Color
Northeast Region, Lobster and Jonah Crab Trap/Pot Gear, Applicable beginning May 1, 2022	
Trawls fished by vessels permitted by the state of Maine and with a principal port identified in Maine when fished in state waters.	Purple.

TABLE 9 TO PARAGRAPH (b)(3)—Continued

Color code scheme	
Plan management area	Color
Trawls fished by vessels permitted by the state of Maine and NMFS, with a principal port identified in Maine when fished in Federal LMA 1 waters *.	Purple, Green.
Trawls fished by vessels permitted by the state of New Hampshire and with a principal port identified in New Hampshire when fished in state waters.	Yellow.
Trawls fished by vessels permitted by the state of New Hampshire and NMFS, with a principal port identified in New Hampshire when fished in Federal LMA 1 waters *.	Yellow, Green.
Trawls fished by vessels permitted by the state of Massachusetts and with a principal port identified in Massachusetts when fished in state waters.	Red.
Trawls fished by vessels permitted by the state of Massachusetts and NMFS with a principal port identified in Massachusetts when fished in Federal waters of LMA 1, OC, LMA 2 (including 2/3 overlap) *.	Red, Green.
Trawls fished by vessels permitted by the state of Rhode Island and with a principal port identified in Rhode Island when fished in state waters.	Silver/Gray.
Trawls fished by vessels permitted by the state of Rhode Island and NMFS, with a principal port identified in Rhode Island when in Federal waters of LMA 2 (including 2/3 overlap) *.	Silver/Gray, Green.
Trawls fished in the Northeast EEZ Offshore Management Area 3 (LMA3) excluding the 2/3 overlap	Black, Green.
Northeast Region, Other Trap/Pot gear	
Massachusetts Restricted Area	Red.
Northern Nearshore	Red.
Northern Inshore State	Red.
Stellwagen Bank/Jeffreys Ledge Restricted Area	Red.
Great South Channel Restricted Area overlapping with LMA 2 and/or Outer Cape	Red.
Exempt Rhode Island state waters (single traps)	Red and Blue.
Exempt Massachusetts state waters in LMA 1 (single traps)	Red and White.
Exempt Massachusetts state waters in LMA 2 (single traps)	Red and Black.
Exempt Massachusetts state waters in Outer Cape (single traps)	Red and Yellow.
Isles of Shoals, ME (single traps)	Red and Orange.
Great South Channel Restricted Area overlapping with LMA 2/3 and/or LMA 3	Black.
Jordan Basin	Black and Purple (LMA 3), Red and Purple (LMA 1)
Jeffreys Ledge	Red and Green.
Trap/Pot Gear	
Southern Nearshore	Orange.
Southeast Restricted Area North (state Waters)	Blue and Orange.
Southeast Restricted Area North (Federal Waters)	Green and Orange.
Offshore	Black.
Gillnet excluding shark gillnet	
Cape Cod Bay Restricted Area	Green.
Stellwagen Bank/Jeffreys Ledge Restricted Area	Green.
Great South Channel Restricted Area	Green.
Great South Channel Restricted Sliver Area	Green.
Other Northeast Gillnet Waters	Green.
Jordan Basin	Green and Yellow.
Jeffreys Ledge	Green and Black.
Mid/South Atlantic Gillnet Waters	Blue.
Southeast U.S. Restricted Area South	Yellow.
Other Southeast Gillnet Waters	Yellow.
Shark Gillnet (with webbing of 5″ or greater)	
Southeast U.S. Restricted Area South	Green and Blue.
Southeast Monitoring Area	Green and Blue.
Other Southeast Waters	Green and Blue.

* For dual permitted vessels, state regulations will determine whether green marks can remain on gear being fished in state waters.

(c) *Restrictions applicable to trap/pot gear in regulated waters*—(1) *Universal trap/pot gear requirements.* In addition to the gear marking requirements listed in paragraph (b) of this section and the area-specific measures listed in paragraphs (c)(2) through (14) of this section, all trap/pot gear in regulated waters, including the Northern Inshore State Trap/Pot Waters Area, must comply with the universal gear requirements listed in paragraphs (c)(1)(i) through (iii) of this section; [1]

[1] Fishermen are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are considered to be less of an entanglement threat and are thus preferable to knots.

(i) *No buoy line floating at the surface.* No person or vessel may fish with trap/pot gear that has any portion of the buoy line floating at the surface at any time when the buoy line is directly connected to the gear at the ocean bottom. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, floating line may be used between these objects;

(ii) *No wet storage of gear.* Trap/pot gear must be hauled out of the water at least once every 30 days; and

(iii) *Groundlines.* All groundlines must be composed entirely of sinking line. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(2) *Area specific gear requirements.* Trap/pot gear must be set according to the requirements outlined in paragraphs (c)(2)(i) through (iii) of this section and in the table to paragraph (c)(2)(iv) of this section;

(i) *Single traps and multiple-trap trawls.* All traps must be set according to the configuration outlined in the table to paragraph (c)(2)(iv) of this section. Trawls up to and including five traps must only have one buoy line unless specified otherwise in the table to paragraph (c)(2)(iv) of this section;

(ii) *Buoy line weak links.* With the exception of Northeast Region lobster and Jonah crab trap/pot trawls, all buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, radar reflectors, subsurface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed either as close to each individual buoy, flotation device and/or weight as operationally feasible, or at the base of the surface system where the surface system attaches to the single buoy line, and that meets the following specifications;

(A) *Weak link breaking strengths.* The breaking strength of the weak links must not exceed the breaking strength listed in paragraph (c)(2)(iv) of this section for a specified management area;

(B) *Approved weak links.* The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Greater Atlantic Regional Administrator. An outreach guide illustrating the techniques for making weak links is available from the Greater Atlantic Regional Administrator upon request and posted on the Atlantic Large Whale Take Reduction Plan website *Fisheries.NOAA.gov/ALWTRP; and*

(C) *Clean breaks.* Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this paragraph (c)(2)(ii)(C);

(iii) *Weak buoy lines and weak insertion devices.* Beginning May 1, 2022, all lobster and Jonah crab trap/pot buoy lines in the management areas and configurations outlined in the table to paragraph (c)(2)(iv) of this section must use weak line or must insert weak devices along the buoy line as described in the table to paragraph (c)(2)(iv). The weak line and weak insert devices must meet the following specifications;

(A) *Breaking strength.* The breaking strength of the weak buoy lines and weak insertion devices must not exceed 1,700 lb (771 kgs);

(B) *Approved devices and distance between weak insertions.* Weak insertion devices must be inserted in the specified intervals from the surface system and must be devices chosen from the following list approved by NMFS, including any rope no thinner than 5/16 inch (8 mm) diameter that is engineered to break at 1,700 lb (771 kg) or less in a color contrasting with the primary buoy line and 3 feet (91.4 cm) or longer spliced on either end into the primary buoy line. Splices that achieve nearly the manufactured breaking strength include but are not limited to: Three or more tuck splices, an eye to loop with 3 or more tuck splices, or a butt splice. A 3-foot long hollow braided sleeve such as those known as the South Shore Sleeve installed over a parted buoy line is approved. A plastic weak link engineered to break at 1700 lb (771 kg) or less in a color that contrasts with the buoy line and with the breaking strength imprinted on the weak link is approved. The Greater Atlantic Regional Administrator will approve other materials, devices, or configurations inserted according to specifications approved in writing by the Greater Atlantic Regional Administrator. An outreach guide illustrating the techniques for making weak insert devices is available from the Greater Atlantic Regional Administrator upon request and posted on the Atlantic Large Whale Take Reduction Plan website *Fisheries.NOAA.gov/ALWTRP; and*

(C) *Clean breaks.* Weak line and weak inserts must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak insert breaks. Splices are not considered to be knots for the purposes of this paragraph (c)(2)(iii)(D).

(iv) *Table of area specific trap/pot gear requirements.*

TABLE 10 TO PARAGRAPH (c)(2)(iv)

Mgmt area; location	Minimum number traps/trawl	Minimum number of weak rope or weak insertion configuration
Northeast Region Lobster and Jonah Crab Trap/Pot, Applicable beginning May 1, 2022		
Northern Inshore State; Maine Zones A, B, F, G exempt waters to 3 miles.	3 (1 buoy line)	Weak line for the top 50 percent of the buoy line or one weak insertion device at 50 percent buoy line length from top.
Northern Inshore State; Maine Zones C, D, and E exempt waters to 3 miles.	2 (1 buoy line) or 4 (2 buoy lines)	Weak line for the top 50 percent of the buoy line or one weak insertion device at 50 percent buoy line length from top.
Northern Nearshore: Maine Zone A East 3 to 12 miles.	10 (1 buoy line) or 20 (2 buoy lines).	Weak line for the top 33 percent of the buoy line or one weak insertion device at 33 percent buoy line length from top.
Northern Nearshore: Maine Zone A West 3 to 6 miles.	4 (1 buoy line) or 8 (2 buoy lines)	Weak line for the top 50 percent of the buoy line or two weak insertion devices, one at 25 percent and one at 50 percent buoy line length from top.
Northern Nearshore: Maine Zone A West 6 to 12 miles.	8 (1 buoy line) or 15 (2 buoy lines)	Weak line for the top 50 percent of the buoy line or two weak insertion devices, one at 25 percent and one at 50 percent buoy line length from top.

TABLE 10 TO PARAGRAPH (c)(2)(iv)—Continued

Mgmt area; location	Minimum number traps/trawl	Minimum number of weak rope or weak insertion configuration
Northern Nearshore: Maine Zone B 3 to 6 miles	5 (1 buoy line)	Weak line for the top 50 percent of the buoy line or two weak insertion devices, one at 25 percent and one at 50 percent buoy line length from top.
Northern Nearshore: Maine Zone C, D, E 3 to 6 miles.	5 (1 buoy line) or 10 (2 buoy lines)	Weak line for the top 50 percent of the buoy line or two weak insertion devices, one at 25 percent and one at 50 percent buoy line length from top.
Northern Nearshore: Maine Zone F and G 3 to 6 miles.	5 (1 buoy line) or 10 (2 buoy lines)	Weak line for the top 33 percent of the buoy line or one weak insertion device at 33 percent buoy line length from top.
Northern Nearshore: Maine Zone B, D, and E 6 to 12 miles.	5 (1 buoy line) or 10 (2 buoy lines)	Weak line for the top 50 percent of the buoy line or two weak insertion devices, one at 25 percent and one at 50 percent buoy line length from top.
Northern Nearshore: Maine Zone C 6 to 12 miles	10 (1 buoy line) or 20 (2 buoy lines).	Weak line for the top 50 percent of the buoy line or two weak insertion devices, one at 25 percent and one at 50 percent buoy line length from top.
Northern Nearshore: Maine Zone F 6 to 12 miles	5 (1 buoy line) or 10 (2 buoy lines)	Weak line for the top 33 percent of the buoy line or one weak insertion device at 33 percent buoy line length from top.
Northern Nearshore: Maine Zone G 6 to 12 miles	10 (1 buoy line) or 20 (2 buoy lines).	Weak line for the top 33 percent of the buoy line or one weak insertion device at 33 percent buoy line length from top.
Northern Inshore State and Massachusetts Restricted Area; Massachusetts State Waters[2].	No minimum number of traps per trawl. Trawls up to and including 3 or fewer traps must only have one buoy line.	Weak inserts every 60 feet (18.3 m) in top 75 percent of line or full weak line through top 75 percent of line.
Northern Inshore State and Massachusetts Restricted Area; Other Massachusetts State Waters.	2 (1 buoy line) Trawls up to and including 3 or fewer traps must only have one buoy line.	Weak inserts every 60 feet (18.3 m) in top 75 percent of line or full weak line through top 75 percent of line.
Northern Inshore State; New Hampshire State Waters.	No minimum trap/trawl	Weak line for the top 50 percent of the buoy line or one weak insertion device at 50 percent buoy line length from top.
Northern Nearshore; New Hampshire and Massachusetts (3–6 miles).	10	Weak line for the top 50 percent of the buoy line or two weak insertion devices, one at 25 percent and one at 50 percent buoy line length from top.
Northern Nearshore, Massachusetts Restricted Area, and Stellwagen Bank/Jeffreys Ledge Restricted Area; LMA 1 (6–12 miles).	15	Weak line for the top 50 percent of the buoy line or two weak insertion devices, one at 25 percent and one at 50 percent buoy line length from top.
Northern Nearshore and LMA1 Restricted Area; LMA1 (12+ miles).	25	Weak line for the top 33 percent of the buoy line or one weak insertion device at 33 percent buoy line length from top.
Northern Inshore State, Massachusetts Restricted Area, and Massachusetts South Island Restricted Area; OC and LMA1/OC Overlap(0–3 miles).	No minimum number of traps per trawl.	Weak inserts every 60 ft (18.3 m) in top 75 percent of line or full weak line through top 75 percent of line.
Northern Nearshore and Massachusetts Restricted Area; OC (3–12 miles).	15	Weak line for the top 50 percent of the buoy line or two weak insertion devices, one at 25 percent and one at 50 percent buoy line length from top.
Northern Nearshore and Great South Channel Restricted Area; OC (12+ miles).	20	Weak line for the top 33 percent of the buoy line or one weak insertion device at 33 percent buoy line length from top.
Northern Inshore State; RI State Waters	No minimum number of traps per trawl.	Weak inserts every 60 feet (18.3 m) in top 75 percent of line or full weak line through top 75 percent of line.
Northern Nearshore; LMA 2 (3–12 miles)	10	Weak inserts every 60 feet (18.3 m) in top 75 percent of line or full weak line through top 75 percent of line.
Northern Nearshore, Great South Channel Restricted Area, and Massachusetts South of Island Restricted Area; LMA 2 (12+ miles).	20	Weak inserts every 60 feet (18.3 m) in top 75 percent of line or full weak line through top 75 percent of line.
Offshore, Great South Channel Restricted Area, and Massachusetts South Island Restricted Area; LMA 2/3 Overlap (12+ miles).	20	Weak inserts every 60 feet (18.3 m) in top 75 percent of line or full weak line through top 75 percent of line.
Northeast Region Offshore waters including Great South Channel Restricted Area, and Massachusetts South Island Restricted Area, with the exception of the Georges Basin and South Georges 50 Fathom Restricted Areas; LMA 3 including LMA3-only vessels fishing in 2/3 overlap.	45	Weak line for the top 75 percent of one buoy line.
Northeast Region Offshore waters Georges Basin Restricted Area.	50	Weak line for the top 75 percent of the buoy line.

TABLE 10 TO PARAGRAPH (c)(2)(iv)—Continued

Mgmt area; location	Minimum number traps/trawl	Minimum number of weak rope or weak insertion configuration
Northeast Region Offshore waters South Georges 50 Fathom Restricted Area.	35	Weak line for the top 75 percent of the buoy line.
Other Trap/Pot		
Northern Inshore State; Maine State and Pocket Waters [1].	2 (1 buoy line)	≤600 lb.
Northern Nearshore; Maine Zones A–G (3–6 miles) [1]	3 (1 buoy line)	≤600 lb.
Northern Nearshore; Maine Zones A–C (6–12 miles) [1].	5 (1 buoy line)	≤600 lb.
Northern Nearshore; Maine Zones D–G (6–12 miles) [1].	10	≤600 lb.
Northern Nearshore, Offshore, and LMA1 Restricted Area; Maine Zones A–E (12+ miles).	15	≤600 lb (≤1500 lb in offshore, 2,000 lb if red crab trap/pot).
Northern Nearshore, Offshore, and LMA1 Restricted Area; Maine Zones F–G (12+ miles).	15 (Mar 1–Oct 31) 20 (Nov 1–Feb 28/29).	≤600 ls (≤1500 lb in offshore, 2,000 ls if red crab trap/pot).
Northern Inshore State and Massachusetts Restricted Area; Massachusetts State Waters [2].	No minimum number of traps per trawl. Trawls up to and including 3 or fewer traps must only have one buoy line.	≤600 lb.
Northern Inshore State, Massachusetts Restricted Area, and Massachusetts South Island Restricted Area; Other Massachusetts State Waters.	2 (1 buoy line) Trawls up to and including 3 or fewer traps must only have one buoy line.	≤600 lb.
Northern Inshore State; New Hampshire State Waters.	No minimum number of traps per trawl.	≤600 lb.
Northern Nearshore and Massachusetts Restricted Area and Stellwagen Bank/Jeffreys Ledge Restricted Area; LMA 1 (3–12 miles).	10	≤600 lb.
Northern Nearshore and LMA1 Restricted Area; LMA 1 (12+ miles).	20	≤600 lb.
Northern Inshore State and Massachusetts Restricted Area; LMA1/OC Overlap (0–3 miles).	No minimum number of traps per trawl.	≤600 lb.
Northern Inshore State and Massachusetts Restricted Area; OC (0–3 miles).	No minimum number of traps per trawl.	≤600 lb.
Northern Nearshore and Massachusetts Restricted Area; OC (3–12 miles).	10	≤600 lb.
Northern Nearshore and Great South Channel Restricted Area; OC (12+ miles).	20	≤600 lb.
Northern Inshore State; Rhode Island State Waters ..	No minimum number of traps per trawl.	≤600 lb.
Northern Nearshore, and Massachusetts South Island Restricted Area; LMA 2 (3–12 miles).	10	≤600 lb.
Northern Nearshore, Great South Channel Restricted Area; LMA 2 (12+ miles).	20	≤600 lb.
Northeast Offshore and Great South Channel Restricted Area, and Massachusetts South Island Restricted Area; LMA 2/3 Overlap (12+ miles).	20	≤1500 lb (2,000 lb if red crab trap/pot).
Northeast Offshore waters, Great South Channel Restricted Area, and Massachusetts South Island Restricted Area; LMA 3 (12+ miles).	20	≤1500 lb (2,000 lb if red crab trap/pot).
Southern Nearshore; LMA 4,5,6	No minimum number of traps per trawl.	≤600 lb.
Southeast U.S. Restricted Area North [3] Florida State Waters.	1	≤200 lb.
Southeast U.S. Restricted Area North; [3] Georgia State Waters.	1	≤600 lb.
Southeast U.S. Restricted Area North; [3] South Carolina State Waters.	1	≤600 lb.
Southeast U.S. Restricted Area North; [3] Federal Waters off Florida, Georgia, South Carolina.	1	≤600 lb.

[1] The 6-mile line, pocket waters, and Maine Zones are defined in paragraphs (a)(2)(iii) through (v) of this section.
[2] Massachusetts State waters as defined as paragraph (a)(3)(ii)(E) of this section.
[3] See paragraph (f)(1) of this section for description of area.

(3) *Massachusetts Restricted Area*—(i) *Area.* The Massachusetts Restricted Area is bounded landward by the Massachusetts shoreline, from points MRA1 through MRA3 bounded seaward by the designated Massachusetts state waters boundary, and then bounded by a rhumb line connecting points MRA3 through MRA11 in order as detailed in table 11 to paragraph (c)(3)(i);

TABLE 11 TO PARAGRAPH (c)(3)(i)

Point	N lat.	W long.
MRA1	42°52.32′	70°48.98′
MRA2	42°52.58′	70°43.94′
MRA3	42°12′	70°38.69′
MRA4	42°12′	70°30′
MRA5	42°30′	70°30′
MRA6	42°30′	69°45′
MRA7	41°56.5′	69°45′
MRA8	41°21.5′	69°16′
MRA9	41°15.3′	69°57.9′
MRA10	41°20.3′	70°00′
MRA11	41°40.2′	70°00′

(ii) *Closure to fishing with buoy lines.* From February 1 to April 30, it is prohibited to fish with, set, or possess trap/pot gear in the area in this paragraph (c)(3)(i) of this section unless it is fished without buoy lines or with buoy lines that are stored on the bottom until it can be remotely released for hauling, or it is stowed in accordance with § 229.2 of this chapter. Authorizations for fishing without buoy lines must be obtained if such fishing would not be in accordance with surface marking requirements of §§ 697.21 and 648.84 of this title or other applicable fishery management regulations. The minimum number of trap/trawl gear configuration requirements specified in paragraph (c)(2)(iv) of this section remain in effect unless an exemption to those requirements is authorized.

(iii) *Area-specific gear or vessel requirements.* From May 1 through January 31, no person or vessel may fish with or possess trap/pot gear in the Massachusetts Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(4) *South Island Restricted Area*—(i) *Area.* The South Island Restricted Area is bounded by the following points connected by rhumb lines in the order listed, and bounded on the north by the shoreline of Nantucket, Massachusetts.

TABLE 12 TO PARAGRAPH (c)(4)(i)

Point	N lat.	W long.
SIRA1	41°20.00′ N	71°19.00′ W
SIRA2	41°20.00′ N	69°30.00′ W
SIRA3	40°30.00′ N	69°30.00′ W
SIRA4	40°30.00′ N	71°19.00′ W
SIRA	41°20.00′ N	71°19.00′ W

(ii) *Closure to fishing with buoy lines.* From February 1 to April 30, it is prohibited to fish with, set, or possess trap/pot gear in the area in paragraph (c)(4)(i) of this section unless it is fished without buoy lines or with buoy lines that are stored on the bottom until they can be remotely released for hauling, or the trap/pot gear is stowed in accordance with § 229.2. Authorizations for fishing without buoy lines must be obtained if such fishing would not be in accordance with surface marking requirements of 50 CFR 697.21 and 648.84. The minimum number of trap/trawl gear configuration requirements specified in paragraph (c)(2)(iv) of this section remain in effect unless an exemption to those requirements is authorized.

(iii) *Area-specific gear or vessel requirements.* From May 1 through January 31, no person or vessel may fish with or possess trap/pot gear in the Massachusetts South Island Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(5) *Great South Channel Restricted Trap/Pot Area*—(i) *Area.* The Great South Channel Restricted Trap/Pot Area consists of the area bounded by the following points.

TABLE 13 TO PARAGRAPH (c)(5)(i)

Point	N lat.	W long.
GSC1	41°40′	69°45′
GSC2	41°0′	69°05′
GSC3	41°38′	68°13′
GSC4	42°10′	68°31′
GSC1	41°40′	69°45′

(ii) *Closure to fishing with buoy lines.* From April 1 through June 30, it is prohibited to fish with, set, or possess trap/pot gear in the area in paragraph (c)(5)(i) of this section unless it is fished without buoy lines or with buoy lines that are stored on the bottom until they can be remotely released for hauling, or the trap/pot gear is stowed in accordance with § 229.2. Authorizations for fishing without buoy lines must be obtained if such fishing would not be in accordance with surface marking requirements of 50 CFR 697.21 and 648.84.

(iii) *Area-specific gear or vessel requirements.* From July 1 through March 31, no person or vessel may fish with or possess trap/pot gear in the Great South Channel Restricted Trap/Pot Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(6) *Lobster Management Area One Restricted Area*—(i) *Area.* The Lobster Management Area One Restricted Area (LMRA1) is bounded by the following points connected by rhumblines in the order listed.

TABLE 14 TO PARAGRAPH (c)(6)(i)

Point	N lat.	W long.
LMA1RA 1	43°06′	69°36.77′
LMA1RA 2	43°44′	68°21.6′
LMA1RA 3	43°32.68′	68°17.27′
LMA1RA 4	42°53.52′	69°32.16′
LMA1RA 1	43°06′	69°36.77′

(ii) *Restrictions to fishing with buoy lines.* From October 1 to January 31, it is prohibited to fish with, set, or possess trap/pot gear in the area in paragraph (c)(6)(i) of this section unless it is fished without buoy lines or with buoy lines that are stored on the bottom until they can be remotely released for hauling, or the trap/pot gear is stowed in accordance with § 229.2. Authorizations for fishing without buoy lines must be obtained if such fishing would not be in accordance with surface marking requirements of 50 CFR 697.21 and 648.84. The minimum number of trap/trawl gear configuration requirements specified in paragraph (c)(2)(iv) of this section remain in effect unless an exemption to those requirements is authorized.

(iii) *Area-specific gear or vessel requirements.* From February 1 through September 30, no person or vessel may fish with or possess trap/pot gear in the LMA 1 Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(7) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as the Massachusetts Restricted Area in paragraph (c)(3) of this section, that lie south of 43°15′ N lat. and west of 70°00′ W long.

(ii) *Year round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(8) *Georges Basin Restricted Area* (i) *Area.* The Georges Basin Restricted Area (GBRA) referred to in paragraph (c)(2)(iv) of this section is bounded by rhumb lines connecting the following points in the order listed in table 15 to paragraph (c)(8)(i).

TABLE 15 TO PARAGRAPH (c)(8)(i)

Point	N lat.	W long.
GBRA 1	42°03.00′	67°40.02′
GBRA 2	42°30.00′	67°40.02′
GBRA 3	42°30.00′	67°27.00′
GBRA 4	42°09.30′	67°08.70′
GBRA 1	42°03.00′	67°40.02′

(iii) *Area-specific gear or vessel requirements.* Beginning May 1 2022, no person or vessel may fish with or possess trap/pot gear in the Georges Basin Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(9) *South Georges 50 Fathom Restricted Area*—(i) *Area.* The South Georges 50 Fathom Restricted Area curve line referred to in paragraph (c)(2)(iv) of this section is an area bounded in the south by the 40 degree southern border of the Northeast Region, bounded seaward by the EEZ, and bounded in the north by rhumb lines connecting the following points in the order listed in table 16 to paragraph (c)(9)(i).

TABLE 16 TO PARAGRAPH (c)(9)(i)

Point	N lat.	W long.
SGRA 1	40°00.00′	71°49.86′
SGRA 2	40°06.47′	71°24.69′
SGRA 3	40°06.49′	71°24.62′
SGRA 4	40°20.82′	71°03.52′
SGRA 5	40°20.89′	71°03.42′
SGRA 6	40°21.16′	70°35.17′
SGRA 7	40°21.16′	70°35.02′
SGRA 8	40°16.84′	70°07.34′
SGRA 9	40°16.81′	70°07.17′
SGRA 10	40°09.92′	69°40.43′
SGRA 11	40°09.87′	69°40.25′
SGRA 12	40°14.72′	69°12.77′

TABLE 16 TO PARAGRAPH (c)(9)(i)—Continued

Point	N lat.	W long.
SGRA 13	40°14.74′	69°12.63′
SGRA 14	40°19.83′	68°45.19′
SGRA 15	40°19.86′	68°45.05′
SGRA 16	40°31.55′	68°21.25′
SGRA 17	40°31.63′	68°21.10′
SGRA 18	40°34.09′	67°52.94′
SGRA 19	40°34.11′	67°52.76′
SGRA 20	40°38.45′	67°24.98′
SGRA 21	40°38.46′	67°24.90′
SGRA 22	40°50.05′	67°00.91′
SGRA 23	40°50.14′	67°00.73′
SGRA 24	41°00.10′	66°35.45′
SGRA 25	41°00.21′	66°35.18′
SGRA 26	41°14.84′	66°21.82′

(ii) *Area-specific gear or vessel requirements.* Beginning May 1, 2022, no person or vessel may fish with or possess trap/pot gear in the South Georges 50 Fathom Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(10) *Offshore Trap/Pot Waters Area—(i) Area.* The Offshore Trap/Pot Waters Area includes all Federal waters of the EEZ Offshore Management Area known as Lobster Management Area 3, including the area known as the Area 2/3 Overlap and Area 3/5 Overlap as defined in the American Lobster Fishery regulations at 50 CFR 697.18, with the exception of the Great South Channel Restricted Trap/Pot Area, Southeast Restricted Area, Georges Basin Restricted Area, South Georges 50 Fathom Restricted Area, and extending south along the 100-fathom (600-ft or 182.9-m) depth contour from 35°14′ N lat. South to 27°51′ N lat., and east to the eastern edge of the EEZ.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Northeast Region portion of Offshore Trap/Pot Waters Area that overlaps an area from the U.S./Canada border south to a straight line from 41°18.2′ N lat., 71°51.5′ W long. (Watch Hill Point, RI) south to 40°00′ N lat., and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area bounded on the north by a straight line from 41°18.2′ N lat., 71°51.5′ W long. (Watch Hill Point, RI) south to 40°00′ N lat. and then east to the eastern edge of the EEZ, and bounded on the south by a line at 32°00′ N lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(iv) *Seasonal area-specific gear or vessel requirements.* From November 15 to April 15, no person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area from 32°00′ N lat. south to 29°00′ N lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(v) *Seasonal area-specific gear or vessel requirements.* From December 1 to March 31, no person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area from 29°00′ N lat. south to 27°51′ N lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) in this section, or unless the gear is stowed as specified in § 229.2.

(11) *Northern Inshore State Trap/Pot Waters Area—*(i) *Area.* The Northern Inshore State Trap/Pot Waters Area includes the state waters of Rhode Island, Massachusetts, New Hampshire, and Maine, with the exception of Massachusetts Restricted Area and those waters exempted under paragraph (a)(3) of this section. Federal waters west of 70°00′ N lat. in Nantucket Sound are also included in the Northern Inshore State Trap/Pot Waters Area.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Northern Inshore State Trap/Pot Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(12) *Northern Nearshore Trap/Pot Waters Area—*(i) *Area.* The Northern Nearshore Trap/Pot Waters Area includes all Federal waters of EEZ Nearshore Management Area 1, Area 2, and the Outer Cape Lobster Management Area (as defined in the American Lobster Fishery regulations at 50 CFR 697.18), with the exception of the Great South Channel Restricted Trap/Pot Area, Massachusetts Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, and Federal waters west of 70°00′ N lat. in Nantucket Sound (included in the Northern Inshore State Trap/Pot Waters Area) and those waters exempted under paragraph (a)(3) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel

may fish with or possess trap/pot gear in the Northern Nearshore Trap/Pot Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

(13) *Southern Nearshore Trap/Pot Waters Area*—(i) *Area.* The Southern Nearshore Trap/Pot Waters Area includes all state and Federal waters that fall within EEZ Nearshore Management Area 4, EEZ Nearshore Management Area 5, and EEZ Nearshore Management Area 6 (as defined in the American Lobster Fishery regulations in § 697.18 of this title, and excluding the Area 3/5 Overlap), and inside the 100-fathom (600-ft or 182.9-m) depth contour line from 35°30′ N lat. south to 27°51′ N lat. and extending inshore to the shoreline or exemption line, with the exception of those waters exempted under paragraph (a)(3) of this section and those waters in the Southeast Restricted Area defined in paragraph (f)(1) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that is east of a straight line from 41°18.2′ N lat., 71°51.5′ W long. (Watch Hill Point, RI) south to 40°00′ N lat., unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area bounded on the north by a straight line from 41°18.2′ N lat., 71°51.5′ W long. (Watch Hill Point, RI) south to 40°00′ N lat. and then east to the eastern edge of the EEZ, and bounded on the south by 32°00′ N lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(iv) *Seasonal area-specific gear or vessel requirements.* From November 15 to April 15, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area from 32°00′ N lat. south to 29°00′ N lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(v) *Seasonal area-specific gear or vessel requirements.* From December 1 to March 31, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area from 29°00′ N lat. south to 27°51′ N lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(14) *Restrictions applicable to the red crab trap/pot fishery*—(i) *Area.* The red crab trap/pot fishery is regulated in the waters identified in paragraphs (c)(10)(i) and (c)(14)(i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(14)(i) of this section that overlaps an area from the U.S./Canada border south to a straight line from 41° 18.2′ N lat., 71°51.5′ W long. (Watch Hill Point, RI) south to 40°00′ N lat., and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(14)(i) of this section that overlaps an area bounded on the north by a straight line from 41°18.2′ N lat., 71°51.5′ W long. (Watch Hill Point, RI) south to 40°00′ N lat. and then east to the eastern edge of the EEZ, and bounded on the south by a line at 32°00′ N lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(iv) *Seasonal area-specific gear or vessel requirements.* From November 15 to April 15, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(14)(i) of this section that overlaps an area from 32°00′ N lat. south to 29°00′ N lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

(v) *Seasonal area-specific gear or vessel requirements.* From December 1 to March 31, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(14)(i) of this section that overlaps an area from 29°00′ N lat. south to 27°51′ N lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements in paragraph (c)(2) of this section or unless the gear is stowed as specified in § 229.2.

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

■ 4. The authority citation for 50 CFR part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 *et seq.*

■ 5. In § 697.21, revise paragraphs (b)(2) and (3) to read as follows:

§ 697.21 Gear identification and marking, escape vent, maximum trap size, and ghost panel requirements.

* * * * *

(b) * * *

(2) With the exception of Maine permitted vessels fishing in Maine Lobster Management Zones that can fish up to ten lobster traps on a trawl with one buoy line, lobster trap trawls consisting of more than three traps must have a radar reflector and a single flag or pennant on the westernmost end (marking the half compass circle from magnetic south through west, to and including north), while the easternmost end (meaning the half compass circle

from magnetic north through east, to and including south) of an American lobster trap trawl must be configured with a radar reflector only. Standard tetrahedral corner radar reflectors of at least 8 inches (20.32 cm) (both in height and width, and made from metal) must be employed. (A copy of a diagram showing a standard tetrahedral corner radar reflector is available upon request to the Office of the Greater Atlantic Regional Administrator.)

(3) No American lobster trap trawl shall exceed 1.5 nautical miles (2.78 km) in length, as measured from radar reflector to radar reflector, except in the EEZ Offshore Management Area 3 where the maximum length of a lobster trap trawl shall not exceed 1.75 nautical miles (3.24 km).

* * * * *

[FR Doc. 2021–19040 Filed 9–16–21; 8:45 am]

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Part III

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Parts 25 and 195
Community Reinvestment Act Regulations; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 25 and 195

[Docket ID OCC–2021–0014]

RIN 1557–AF12

Community Reinvestment Act Regulations

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Comptroller of the Currency proposes to replace the current Community Reinvestment Act rule with rules based on the 1995 Community Reinvestment Act (CRA) rules, as revised, issued by the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC). The proposal would replace the existing rule applicable to both national banks and savings associations with two separate rules, one for national banks and one for savings associations. Such action would effectively rescind the CRA final rule published by the Office of the Comptroller of the Currency on June 5, 2020, and facilitate the issuance of joint CRA rules with the Board and FDIC.

DATES: Comments must be received on or before October 29, 2021.

ADDRESSES: Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title ''Community Reinvestment Act Regulations'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

☐ *Federal eRulemaking Portal—Regulations.gov:* Go to *https://regulations.gov/.* Enter ''Docket ID OCC–2021–0014'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9am–5pm ET or email *regulations@erulemakinghelpdesk.com.*

☐ *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

☐ *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2021–0014'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this action by the following method:

☐ *Viewing Comments Electronically—Regulations.gov:* Go to *https://regulations.gov/.* Enter ''Docket ID OCC–2021–0014'' in the Search Box and click ''Search.'' Click on the ''Documents'' tab and then the document's title. After clicking the document's title, click the ''Browse Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. Supporting materials can be viewed by clicking on the ''Documents'' tab and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Documents Results'' options on the left side of the screen.'' For assistance with the *Regulations.gov* site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9am–5pm ET or email *regulations@erulemakinghelpdesk.com.*

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

FOR FURTHER INFORMATION CONTACT: Emily Boyes, Counsel, Chief Counsel's Office, (202) 649–5490; Vonda Eanes, Director for CRA and Fair Lending Policy, Bobbie K. Kennedy, Technical Expert for CRA and Fair Lending, or Karen Bellesi, Director for Community Development, Bank Supervision Policy, (202) 649–5470, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Office of the Comptroller of the Currency (OCC) [1] proposes to rescind and replace its rule implementing the Community Reinvestment Act (CRA) [2] for national banks and savings associations [3] (collectively, banks),[4] that was published on June 5, 2020 (June 2020 Rule).[5] The OCC would replace the June 2020 Rule with rules largely based on those adopted by the OCC, Federal Deposit Insurance Corporation (FDIC), and Board of Governors of the Federal Reserve System (Board) (collectively, the Agencies) and the former Office of Thrift Supervision on May 4, 1995, as revised (1995 Rules).[6] The proposal would align the OCC's CRA rules with the current Board and FDIC CRA rules to facilitate on-going interagency work to modernize the CRA rules [7] and create consistency for all insured depository institutions (IDIs).[8]

As explained in greater detail below, under this proposal, the June 2020 Rule would remain in effect until replaced by

[1] The OCC is the primary regulator for national banks and Federal savings associations.

[2] Public Law 95–128, 91 Stat. 1147 (1977), *codified at* 12 U.S.C. 2901 *et seq.* The CRA was enacted to promote access to credit by encouraging insured depository institutions to serve their entire communities. During this period, Congress also enacted fair lending laws to address fairness and access to housing and credit. For example, in 1968, Congress passed the Fair Housing Act, 42 U.S.C. 3601 *et seq.,* to prohibit discrimination in renting or buying a home. In 1974, Congress passed the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* (amended in 1976), to prohibit creditors from discriminating against an applicant on the basis of race, color, religion, national origin, sex, marital status, or age. These fair lending laws provide a legal basis for prohibiting discriminatory lending practices, such as redlining. *Interagency Fair Lending Examination Procedures,* p. iv (Aug. 2009), available at *https://www.ffiec.gov/PDF/fairlend.pdf.*

[3] The Office of Thrift Supervision (OTS) and its predecessor agency, the Federal Home Loan Bank Board, also were charged with implementing the CRA. The rulemaking authority of OTS with respect to CRA transferred to the OCC in Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, 1520 (2010). *See also* 12 U.S.C. 2905. The OCC has responsibility for examining Federal savings associations for CRA while the FDIC examines State savings associations for CRA.

[4] As used throughout this notice, the term ''bank'' or ''banks' also includes uninsured Federal branches that result from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)) and State savings associations.

[5] 85 FR 34734 (June 5, 2020).

[6] 60 FR 22156 (May 4, 1995). As used herein, the 1995 Rules refer to the regulatory framework adopted by the Agencies in 1995 and any revisions the Agencies have made to that regulatory framework, except for the changes made by the OCC in the June 2020 Rule. *E.g.,* 70 FR 44256 (Aug. 2, 2005).

[7] NR 2021–77, Interagency Statement on Community Reinvestment Act Joint Agency Action (July 20, 2021).

[8] 12 U.S.C. 1813(c)(2).

final rules based on this proposal. The OCC proposes to apply a transition for replacing certain aspects of the June 2020 Rule (*e.g.,* bank type changes, approved strategic plans, and qualifying activities). Subsequently, as part of the ongoing interagency CRA rulemaking, the OCC would propose a joint revised CRA rule to replace the rules in this proposal. The proposed transition considerations are described in more detail in Section IV.

II. Background

Congress enacted the CRA in 1977 to encourage IDIs to help meet the credit needs of their entire communities, including low- and moderate-income (LMI) neighborhoods, consistent with safe and sound lending practices. Specifically, Congress found that ''(1) regulated financial institutions are required by law to demonstrate that their deposit facilities serve the convenience and needs of the communities in which they are chartered to do business; (2) the convenience and needs of communities include the need for credit as well as deposit services; and (3) regulated financial institutions have continuing and affirmative obligation[s] to help meet the credit needs of the local communities in which they are chartered.'' [9]

The Agencies first issued rules to implement the CRA in 1978.[10] Between 1978 and 2018, the Agencies revised and sought to clarify the CRA rules numerous times, most significantly in 1995.[11] On September 5, 2018, the OCC published an Advance Notice of Proposed Rulemaking (ANPR) as part of its renewed efforts to modernize the CRA regulatory framework.[12] Subsequently, on January 9, 2020, the OCC and FDIC published a joint CRA Notice of Proposed Rulemaking (January 2020 NPR),[13] and on June 5, 2020, the OCC issued the June 2020 Rule in an effort to modernize its CRA rules.

The June 2020 Rule took effect October 1, 2020; however, several provisions have delayed compliance dates of either January 1, 2023, or January 1, 2024.[14] To implement certain provisions of the June 2020 Rule with a January 1, 2023, compliance date, the OCC published a Notice of Proposed Rulemaking on December 4, 2020 (December 2020 NPR), that proposed an approach to determine the benchmarks, thresholds, and minimums in the June 2020 Rule's new performance standards.[15] In connection with the December 2020 NPR, the OCC published a CRA information collection survey (Information Collection) [16] to obtain data necessary to calibrate the June 2020 Rule's new performance standards. Subsequently, on May 18, 2021, the OCC announced that it was reconsidering the June 2020 Rule, did not plan to finalize the December 2020 NPR, and was discontinuing the Information Collection.[17] The OCC took these steps to provide for an orderly reconsideration of the June 2020 Rule and provide banks with the flexibility to deploy resources in response to the COVID–19 pandemic.[18]

While the June 2020 Rule and the subsequent December 2020 NPR and Information Collection represent the OCC's most recent efforts to modernize the CRA regulatory framework, the Agencies' efforts at reform have spanned the past decade. For example, in 2014, pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA),[19] the Agencies began a decennial review of all of their regulations, with input from the public, to identify outdated, unnecessary, or unduly burdensome regulations and consider how to reduce regulatory burden on IDIs—while, at the same time, ensuring the safety and soundness of these institutions and of the financial system. In 2017, the Agencies issued a report to Congress that included a summary of the public comments and recommendations received during the EGRPRA review, including those that addressed the CRA regulatory framework.[20] Among the most frequently raised CRA-related issues were (1) the assessment area definition; (2) incentives for banks to serve LMI, unbanked, underbanked, and rural communities; (3) regulatory burdens associated with the recordkeeping and reporting requirements and the asset thresholds for the various CRA examination methods; (4) the need for clarity regarding performance measures and better examiner training to ensure consistency and rigor in CRA examinations; and (5) the refinement of the CRA ratings methodology.

On April 3, 2018, the U.S. Department of the Treasury released a report on the implementation of the CRA, which included recommendations for modernizing the CRA rules based on stakeholder input.[21] Starting in 2018, the Agencies also engaged with stakeholders, including civil rights organizations, community groups, members of Congress, academics, and IDIs, to obtain their perspectives and feedback on the CRA and potential improvements to the CRA regulatory framework. Throughout all phases of the OCC's recent CRA modernization efforts, including prior to the issuance and during the implementation of the June 2020 Rule, many stakeholders objected to the OCC independently issuing a CRA rule and stressed the importance of the Agencies working together to issue consistent CRA rules.

A. Board ANPR

Separately from the OCC, the Board has explored ways to modernize the CRA regulatory framework to address changes in the banking industry, including the increased use of technology to deliver banking services. Specifically, the Board conducted stakeholder outreach through a series of roundtable discussions [22] and published a CRA ANPR on October 19, 2020 (Board ANPR),[23] that invited public comment on an approach to modernize its CRA rule. The Board ANPR described its objectives as including:

- Increasing the clarity, consistency, and transparency regarding where, how, and what activities receive CRA consideration, while minimizing data burden;
- Tailoring CRA supervision to reflect differences in bank sizes and business models, local market needs and opportunities, and expectations across business cycles;

[9] 12 U.S.C. 2901(a).

[10] 43 FR 47144 (Oct. 12, 1978). The CRA rules of the Agencies were codified in 12 CFR parts 25, 563e (recodified as 195), 228, and 345.

[11] 60 FR 22156 (May 4, 1995).

[12] The OCC, along with the Board and the FDIC, worked together on an ANPR, which the OCC published on September 5, 2018. 83 FR 45053 (September 5, 2018).

[13] 85 FR 1204 (January 9, 2020).

[14] 12 CFR 25.01(c)(4).

[15] 85 FR 78258 (Dec. 4, 2020).

[16] 85 FR 81270 (Dec. 15, 2020).

[17] *See* OCC Bulletin 2021–24, Community Reinvestment Act: Implementation of the June 2020 Final Rule (May 18, 2021), available at *https://www.occ.gov/news-issuances/bulletins/2021/bulletin-2021-24.html.*

[18] *Id.*

[19] Public Law 104–208, 110 Stat. 3001 (1996) (codified at 12 U.S.C. 3311).

[20] *See* Federal Financial Institutions Examination Council, Joint Report to Congress. Economic Growth and Regulatory Paperwork Reduction Act, pp. 41–48 (March 3, 2017), available at *https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf.*

[21] See Memorandum from the U.S. Department of the Treasury to the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, Community Reinvestment Act—Findings and Recommendations (April 3, 2018), available at *https://home.treasury.gov/sites/default/files/2018-04/4-3-18%20CRA%20memo.pdf.*

[22] *See, e.g.,* Perspectives from Main Street: Stakeholder Feedback on Modernizing the Community Reinvestment Act (June 2019) available at *https://www.federalreserve.gov/publications/files/stakeholder-feedback-on-modernizing-the-community-reinvestment-act-201906.pdf.*

[23] 85 FR 66410.

- Updating performance standards to address changes in the banking industry, particularly the increased use of mobile and internet delivery channels;
- Promoting community engagement;
- Strengthening the special treatment of minority depository institutions; and
- Recognizing that CRA and fair lending responsibilities are mutually reinforcing.

The Board ANPR invited public comment on different policy options to address its objectives. For example, the Board invited comment on how to delineate assessment areas around physical locations. It also sought public comment on deposit-based and lending-based assessment areas for IDIs that conduct a significant amount of lending and deposit collection outside assessment areas around physical locations. In addition, the Board ANPR invited comment on nationwide assessment areas for internet banks.

The Board ANPR suggested a framework for evaluating CRA performance based on a retail test (comprised of retail lending and retail services subtests) and a community development (CD) test (comprised of CD financing and CD services subtests) that would be applicable to Board-regulated IDIs, depending on their size or business model. In addition, the Board ANPR sought feedback on an evaluation framework based on IDI-asset-size thresholds of $750 million or $1 billion. Under this framework, smaller IDIs would be subject to a retail lending test but would have the option to be evaluated based on their retail services and CD activities, while larger IDIs would be evaluated under all four subtests. The suggested framework would base CRA examinations for wholesale and limited purpose IDIs on the CD test. The Board ANPR generally suggested a metric-based approach for the retail lending and CD financing subtests and a qualitative approach to evaluating retail and CD services under their respective subtests. In addition, the Board ANPR suggested a strategic plan option that would provide more clarity and flexibility for establishing bank specific standards to assess activities.

The Board ANPR also discussed ways to update the State, multistate metropolitan statistical area (MSA), and institution ratings by basing these ratings on local assessment area performance. The Board ANPR suggested that the Board could consider certain activities outside of IDIs' assessment areas at the institution level to achieve an ''outstanding'' rating. The Board also indicated it could revise how it would consider discriminatory or other illegal credit practices (DOICP) to both align that consideration with the Uniform Interagency Consumer Compliance Rating System and include consideration of the Military Lending Act (MLA),[24] the Servicemembers Civil Relief Act (SCRA),[25] and the Prohibition Against Unfair, Deceptive, or Abusive Acts or Practices.[26]

The Board further sought feedback on potential revisions to CRA data collection and reporting requirements. The Board ANPR acknowledged that an increased use of metrics would result in an increased need for data collection and reporting and noted that the Board prioritized using both existing data where possible and exempting small IDIs from new data collection requirements.

B. OCC December 2020 NPR

The OCC's June 2020 Rule included new performance standards meant to provide large banks with incentives to achieve specific performance goals and to make CRA evaluations more consistent, reproducible, and comparable over time. These performance standards included the CRA evaluation measure, retail lending distribution tests, and CD minimums. However, the June 2020 Rule did not include the specific benchmarks, thresholds, and minimum values proposed in the January 2020 NPR because the OCC believed that it was appropriate to gather more information to further calibrate these measures. To do so, the OCC undertook an Information Collection [27] and issued the December 2020 NPR, in which it proposed processes to calibrate the benchmark, threshold, and minimum values more precisely.

The OCC received 13 comments on the December 2020 NPR.[28] Although one commenter generally supported the December 2020 NPR's approach to setting the benchmarks, thresholds, and minimums, most commenters expressed concerns with the proposal. These concerns included that the proposed approach would (1) lead to inflated ratings; (2) set arbitrary limits on ratings; (3) not account for local market conditions, which could penalize banks that operate in high-cost markets; (4) not adequately consider the innovative, rapid, and flexible funding solutions offered by internet-based banks with national footprints; and (5) be speculative and complicated.

One commenter stated that there should be hundreds of ratios as opposed to the proposed 26 calibrated values. Another commenter favored an approach where the OCC would take into consideration surpassing a threshold, but it would not initially grant a presumption of a specific rating. The commenter asserted that this would be a more incremental change from the evaluation approach codified in the 1995 Rules and could be used until more data was available for a presumption-based approach. Other commenters stated that a one-size-fits-all model would not work, with one commenter suggesting that the OCC should tie benchmarks to historical, local bank performance data, and community demographics, rather than set them at a nationwide level.[29]

Commenters also generally expressed concern with the Information Collection, stating that (1) it would result in substantial burden and costs for the banks responding to the survey; (2) the data requested were not routinely available or did not exist; and (3) the collection would likely yield inaccurate results. Due to these concerns, several commenters requested that the OCC pause or rescind the Information Collection.

Given the specific concerns with the December 2020 NPR and the related Information Collection, the majority of commenters reiterated the request that the Agencies work together to create a consistent CRA framework. After considering these comments, the OCC announced that it would not finalize the December 2020 NPR and would discontinue the Information Collection.[30] In addition, as noted, the OCC later announced that it would work with the Board and FDIC on joint rules to modernize the CRA.[31]

C. June 2020 Rule Implementation

Following publication of the June 2020 Rule, the OCC began its implementation by developing transition policies and procedures to address the phased compliance dates

[24] 10 U.S.C. 987 *et seq.*

[25] 50 U.S.C. 3901 *et seq.*

[26] 12 U.S.C. 5531.

[27] *See supra* note 16.

[28] The OCC received eight comments from the banking industry or industry trade associations, two comment from community groups, two comments from the general public, and one comment from a state government.

[29] Stakeholders also offered comments on other aspects of the December 2020 NPR, including the OCC's proposed approach for addressing declines in CRA performance and the proposed technical changes. Comments on the approach for addressing declines in CRA performance questioned how the OCC would measure declines in activities and whether the proposed ten percent decline was appropriate. Comments regarding the technical changes generally sought additional clarifications.

[30] *See supra* note 17.

[31] *See supra* note 7.

provided in the rule. In addition, the OCC (1) issued guidance on implementation of key provisions of the June 2020 Rule; (2) provided training and outreach for examiners, community groups, and the banking industry; and (3) instituted the CRA illustrative list and Qualifying Activities Confirmation Request Form.

To implement the June 2020 Rule between the October 1, 2020, effective date and the January 1, 2023, or January 1, 2024, compliance dates, the OCC leveraged the flexibility provided by the June 2020 Rule's transition provision.[32] It is the OCC's intention that the June 2020 Rule and associated guidance would continue to apply until such time as the OCC modifies the rule. A summary of the guidance issued related to the transition provision in the June 2020 Rule includes the following:

- *Definitions.*[33]
  - *Compensation*—The OCC issued guidance on the calculation of the median hourly compensation value for the banking industry for use in quantifying CD services. Effective October 1, 2020, through December 31, 2021, the median hourly compensation value is $39.03.[34]
  - *Partially*—The OCC advised that OCC-regulated banks may receive consideration in CRA evaluations that begin on or after October 1, 2020, for the full or partial value of qualifying CD activities, as applicable, based on the qualifying activities criteria set forth in the June 2020 Rule (*e.g.,* affordable housing for LMI individuals, community support services for LMI individuals, financial education, essential community facilities, and economic development) if those activities are conducted on or after October 1, 2020. For activities conducted before October 1, 2020, the OCC explained that the 1995 Rules and Interagency Questions and Answers Regarding Community Reinvestment (Q&As) [35] will continue to apply and provide partial credit for the portion of mixed-income housing that provides affordable housing to LMI individuals.[36]
  - *Retail lending activities and related definitions* (*i.e., home mortgage loans, consumer loans, small loans to businesses, small loans to farms, CRA-eligible businesses, and CRA-eligible farms*)—In order to provide OCC-regulated banks with sufficient time to update systems for data collection, recordkeeping, and reporting, the OCC advised that examiners will conduct CRA examinations of performance under the applicable retail lending test criteria using the 1995 Rules' definitions of home mortgage loan, small business loan, small farm loan, and consumer loan and the business and farm gross annual revenue threshold of $1 million or less during the transition period. However, the OCC also provided that, at an OCC-regulated bank's option, the OCC also will consider retail loans, as defined in the June 2020 Rule, as ''other loan data,'' or ''other lending-related activities,'' as applicable, if those loans are not otherwise considered under the 1995 Rules' applicable lending test.[37]
  - *Distressed areas and underserved areas*—The June 2020 Rule expanded the definition of what were termed ''distressed or underserved nonmetropolitan middle-income geographies'' under the 1995 Rules to include census tracts that met those definitions in MSAs and added to the definition of underserved area census tracts that did not have a branch within specified distances. On January 29, 2021 the OCC published a list of census tracts that meet the revised definitions.[38]
  - *Small banks and intermediate banks*—The OCC applied the asset-size thresholds in the June 2020 Rule's small bank and intermediate bank definitions to determine bank type in December 2020 and communicated the revised bank types for OCC-regulated banks on January 29, 2021.[39] OCC-regulated banks that transitioned from large banks under the 1995 Rules to intermediate banks under the June 2020 Rule are not required to collect data required under the 1995 Rules for calendar years 2021 forward or report data for calendar years 2022 forward.[40]
- *CD loans, CD investments, and CD services.*[41] The OCC advised that during the June 2020 Rule transition period, examiners will consider all CD activities under the June 2020 Rule that are conducted by OCC-regulated banks on or after October 1, 2020. Further, during the transition period, examiners also will consider all CD activities defined in 12 CFR 25.12(g) of the 1995 Rules [42] that are conducted by OCC-regulated banks during the transition period to the extent there are gaps between the 1995 Rules' CD activities and the qualifying activities criteria in the June 2020 Rule in evaluating performance under the applicable lending, investment, service, or CD test.[43]
- *Qualifying activities confirmation and illustrative list.*[44] As of October 1, 2020, banks and interested parties may elect to submit confirmation requests using the CRA Qualifying Activities Confirmation Request Form to determine whether an activity is consistent with the qualifying activities criteria in the June 2020 Rule.[45] The OCC also published the illustrative list on *www.OCC.gov* to provide examples of activities that meet the qualifying activities criteria in the June 2020 Rule.[46]
- *Small and intermediate bank performance standards* [47] *and wholesale and limited purpose bank performance standards.*[48] The OCC explained that under the June 2020 Rule, the performance standards for small and intermediate banks and wholesale and limited purpose banks would apply beginning on October 1, 2020. The OCC further explained that examiners would apply the Q&As and 1995 Rules' examination procedures, as supplemented by the transition guidance issued by the OCC, to evaluate CRA activities conducted between October 1, 2020, and the effective date of new guidance or examination procedures applicable to the particular activities.[49] The OCC has not issued new guidance replacing the Q&As or

[32] 12 CFR 25.01(c)(5).

[33] 12 CFR 25.03.

[34] OCC Bulletin 2021–5, Community Reinvestment Act: Bank Type Determinations, Distressed and Underserved Areas, and Banking Industry Compensation Provisions of the June 2020 CRA (January 29, 2021) available at *https://www.occ.gov/news-issuances/bulletins/2021/bulletin-2021-5.html.*

[35] *See* Q&A §____.12(h)—8, 81 FR 48506 (July 25, 2016).

[36] OCC Bulletin 2020–99, Community Reinvestment Act: Key Provisions of the June 2020 CRA Rule and Frequently Asked Questions (November 9, 2020), available at *https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-99.html.*

[37] *Id.*

[38] OCC Bulletin 2021–5, Community Reinvestment Act: Bank Type Determinations, Distressed and Underserved Areas, and Banking Industry Compensation Provisions of the June 2020 CRA (January 29, 2021).

[39] *Id.*

[40] OCC Bulletin 2020–99, Community Reinvestment Act: Key Provisions of the June 2020 CRA Rule and Frequently Asked Questions (November 9, 2020).

[41] 12 CFR 25.04(c).

[42] *See* 12 CFR part 25, Appendix C.

[43] OCC Bulletin 2020–99, Community Reinvestment Act: Key Provisions of the June 2020 CRA Rule and Frequently Asked Questions (November 9, 2020).

[44] 12 CFR 25.05.

[45] CRA Qualifying Activities Confirmation Request Guidance and Form is available at *https://www.occ.gov/topics/consumers-and-communities/cra/qualifying-activity-confirmation-request/index-cra-qualifying-activities-confirmation-request.html.*

[46] The CRA Illustrative List of Qualifying Activities is available at *https://www.occ.gov/topics/consumers-and-communities/cra/cra-illustrative-list-of-qualifying-activities.pdf.*

[47] 12 CFR 25.14.

[48] 12 CFR 25.15.

[49] OCC Bulletin 2020–99, Community Reinvestment Act: Key Provisions of the June 2020 CRA Rule and Frequently Asked Questions (November 9, 2020).

examination procedures applicable to the June 2020 Rule.

• *Consideration of performance context.*[50] With regard to performance context (*i.e.,* information about a bank, its community, and its competitors), the OCC stated that it would continue to develop and consider a bank's performance context according to the 1995 Rules' performance context procedures during CRA evaluations until the OCC develops and implements a system for electronic bank submission of performance context under the June 2020 Rule.[51] The OCC has not implemented an electronic system and is still considering performance context as provided in the 1995 Rules.

• *DOICP.*[52] The June 2020 Rule added violations of SCRA and the MLA to the list of enumerated credit-related violations considered when assessing a bank's CRA performance. The addition of these violations codified existing policy under the 1995 Rules, and, therefore, did not substantively alter requirements for OCC-regulated bank CRA examinations.[53]

• *Strategic plans.*[54] As of October 1, 2020, OCC-regulated banks operating under a strategic plan and those that submitted new strategic plans for approval could create one or more target market assessment areas, as permitted in 12 CFR 25.18(g)(2) of the June 2020 Rule, in addition to the bank's assessment areas delineated under 12 CFR 25.41 of the 1995 Rules.[55]

• *Activity location.*[56] The June 2020 Rule provided for the allocation of the dollar value of qualifying activities across multiple assessment areas in 12 CFR 25.24(b)(2). This provision of the June 2020 Rule took effect October 1, 2020.[57]

• *Content and availability of the public file.*[58] As of October 1, 2020, the OCC required OCC-regulated banks to make the public file information required by the June 2020 Rule available to the public in a paper or electronic form. The OCC advised that OCC-regulated banks could comply with this requirement by making the public file available solely on their websites.[59]

• *Public notice by banks.*[60] The OCC required OCC-regulated banks to comply with the June 2020 Rule's public notice requirements by March 1, 2021. To comply with the public notice requirements, OCC guidance permitted these banks to display the notice in their main office and branch office locations in either paper or an electronic format, such as a digital display. In addition to the requirement for display of the public notice in one of these formats, OCC guidance also permitted these banks to post the notice on their websites.[61]

As noted, it is the intention of the OCC that the June 2020 Rule and related guidance will remain in effect until such time as the OCC issues replacement rules associated with this proposal.

In addition to providing guidance on the above provisions that took effect October 1, 2020, the OCC also provided guidance on other issues, including the circumstances under which OCC-regulated banks would receive credit for activities outside of their assessment areas, the definition of disaster area (a term the June 2020 Rule did not define), and consideration of affiliate activities through April 1, 2022.

In considering these and other issues, the OCC identified areas where the June 2020 Rule would benefit from clarification and revision, some of which the December 2020 NPR addressed.

While the OCC's June 2020 CRA Rule was an important step in modernizing the CRA regulatory framework, its implementation revealed to the OCC some of the rule's complexities and demonstrated where there were opportunities for improvement. In particular, the partial implementation of the June 2020 Rule and the responses to the December 2020 NPR made clear the extent of the burden and complexities associated with the data collection and reporting integral to the June 2020 Rule. Moreover, the disproportionate effect of the COVID–19 pandemic on minorities and rural and LMI communities provided further evidence of the need to revisit the June 2020 Rule with the goal of better addressing the financial services needs of vulnerable communities coming out of the pandemic.

In addition, through comment letters, stakeholders have identified specific opportunities for improvement of the June 2020 Rule in areas where the rule was not as clear and transparent as intended. For example, stakeholders have stated that the change in the treatment of affiliate activities was not clear because those activities are not mentioned explicitly in the rule. Rather, stakeholders stated that the lack of consideration for affiliate activities under the June 2020 Rule is inferred from the definition of ''activity,'' which is ''a loan, investment, or service by a bank.''[62] Stakeholders also said that the rule is not clear on how the OCC would treat qualifying activities outside of banks' assessment areas or the broader statewide or regional areas that includes a bank's assessment areas for banks that are not evaluated under the general performance standards. A third example of where the June 2020 Rule could benefit from additional clarity involves the ''CRA desert'' definition, which as defined in the June 2020 Rule could encompass the vast majority of geographic areas in the country and may be too general to ensure consistent application.

Stakeholder feedback on the lack of clarity with certain aspects of the June 2020 Rule and the OCC's experience with its partial implementation highlight that opportunities exist for improvements to a modernized CRA regulatory framework. Such improvements could be achieved through a joint rulemaking that leverages these lessons learned as well as the other feedback the Agencies have received since issuance of the June 2020 Rule.

The OCC has reviewed the June 2020 Rule with these considerations in mind. Based on this review, the OCC proposes to rescind the June 2020 Rule and replace it with rules based on the 1995 Rules (subject to a minor change explained below), while simultaneously working with the Board and FDIC on a joint proposal to modernize the CRA rules.[63] Both of these actions are discussed in more detail below.

III. June 2020 Rule Proposed Rescission and Replacement

The OCC's initial reconsideration of the June 2020 Rule focused on (1) creating consistency and transparency

[50] 12 CFR 25.16.

[51] OCC Bulletin 2020–99, Community Reinvestment Act: Key Provisions of the June 2020 CRA Rule and Frequently Asked Questions (November 9, 2020).

[52] 12 CFR 25.17.

[53] SM 2019–03, Supervisory Policies and Processes for Community Reinvestment Act Performance Evaluations (April 12, 2019), available at *https://el.occ/news-issuances/memorandums/sm-2019-3.pdf.*

[54] 12 CFR 25.18.

[55] OCC Bulletin 2020–99, Community Reinvestment Act: Key Provisions of the June 2020 CRA Rule and Frequently Asked Questions (November 9, 2020).

[56] 12 CFR 25.24.

[57] OCC Bulletin 2020–99, Community Reinvestment Act: Key Provisions of the June 2020 CRA Rule and Frequently Asked Questions (November 9, 2020).

[58] 12 CFR 25.28.

[59] OCC Bulletin 2020–99, Community Reinvestment Act: Key Provisions of the June 2020 CRA Rule and Frequently Asked Questions (November 9, 2020).

[60] 12 CFR 25.30.

[61] OCC Bulletin 2020–99, Community Reinvestment Act: Key Provisions of the June 2020 CRA Rule and Frequently Asked Questions (November 9, 2020).

[62] 12 CFR 25.03.

[63] *See supra* note 7.

in the rules applicable to IDIs; (2) limiting burden on banks, their communities, and examiners; and (3) ensuring that the OCC continues to advance the purpose of the CRA—to encourage banks to help meet the credit needs of their entire communities, including LMI neighborhoods, consistent with safe and sound operations. The OCC considered different options for a revised regulatory framework, including proposing a revised rule that retained aspects of the June 2020 Rule that stakeholders generally supported. The OCC determined, however, that proposing yet another regulatory framework would impose undue burden on banks, their communities, and examiners who would need to learn and implement a new framework that was neither the June 2020 Rule, the 1995 Rules, nor the prospective interagency CRA rules. Further, proposing a new rule that retained aspects of the June 2020 Rule would fail to harmonize the OCC's rule with those of the Board and FDIC, potentially complicating an interagency rulemaking process by introducing unique OCC considerations regarding necessary changes to the regulatory framework and implementation of and transition to any prospective interagency final rules.

In contrast, rescinding and replacing the June 2020 Rule with rules based on the 1995 Rules would provide consistency throughout the banking industry with respect to the rules that apply by statute to all IDIs. A consistent regulatory framework would facilitate an interagency rulemaking process because it would allow all the Agencies to propose common solutions for the same issues. Further, replacing the June 2020 Rule with a regulatory framework that is familiar to all stakeholders would limit the burden associated with adapting to new rules. The partial implementation of the June 2020 Rule further limits the burden on stakeholders because much of the 1995 regulatory framework remains in effect. Specifically, for most banks, reverting to rules based on the 1995 Rules would result in little change to how their CRA performance is evaluated, whereas retaining the June 2020 Rule or some other regulatory framework would require continued implementation actions on the part of banks and the OCC. Finally, reverting to rules based on the 1995 Rules would enable the OCC to continue to meet the requirements of the CRA by ensuring that examiners are evaluating banks' CRA performance based on a proven framework that is focused on ensuring that banks meet the needs of LMI communities.

A. Proposed 12 CFR Part 25

The proposal would replace the June 2020 Rule with a revised 12 CFR part 25 based on the 1995 Rules. Under the proposal, 12 CFR part 25 would be applicable to national banks. The proposed 12 CFR part 25 would be substantively identical to the 1995 Rules. Consequently, all definitions, performance tests and standards, and related data collection, recordkeeping, and reporting requirements would revert to those in place prior to the issuance of the June 2020 Rule. Further, the 1995 Rules' public file and public notice requirements would replace the existing requirements. Proposed Subpart E would correct the 1995 Rules' cross-referenced regulatory citation in 12 CFR 25.62(a)(2) to the definition of ''foreign bank,'' which would read ''12 CFR 28.11(i).''

B. Proposed 12 CFR Part 195

The proposal would reinstate 12 CFR part 195 for savings associations.[64] Under the proposal, the reinstated 12 CFR part 195 would apply to both Federal savings associations regulated by the OCC and State savings associations regulated by the FDIC. Reinstating part 195 would enable the OCC to consult with the FDIC on the integration of the CRA rules applicable to national banks and savings associations as part of the interagency rulemaking process to ensure that the interests of both regulatory agencies and their regulated entities are considered. As with the proposed revised 12 CFR part 25, the proposed 12 CFR part 195 would be substantively identical to the 1995 Rules.

In the alternative, the OCC is considering integrating parts 25 and 195 into a single rule in part 25 applicable to both national banks and savings associations. An integrated part 25 rule applicable to both national banks and savings associations would be substantively the same as the separate rules. In an integrated rule in part 25, proposed Subpart E (Prohibition Against Use of Interstate Branches Primarily for Deposit Production) would apply only to national banks. The OCC requests specific comment on whether:

The OCC should reinstate separate rules for national banks and savings associations or integrate the rules so that part 25 is applicable to both national banks and savings associations.

C. Summary of Proposed Rules

As with the 1995 Rules, the proposed rules would provide for different evaluation methods to respond to basic differences in banks' structures and operations. The proposed rules would provide (1) a streamlined assessment method for small banks that emphasizes lending performance; (2) an assessment method for intermediate small banks (ISB) that considers lending and CD activities; (3) an assessment method for large, retail banks that focuses on lending, investment, and service performance; and (4) an assessment method for wholesale and limited-purpose banks based on CD activities. Further, the proposed rules also would give any bank, regardless of size or business strategy, the choice to be evaluated under a strategic plan.

Under the proposed performance tests and standards, an examiner would consider a bank's performance context in assessing its CRA performance. Specifically, an examiner would review demographic and economic data about the bank's assessment area(s) and information about local economic conditions, the institution's major business products and strategies, and its financial condition, capacity, and ability to lend or invest in its community. The examiner also would review information a bank chooses to provide about lending, investment, and service opportunities in its assessment areas.

Banks would identify one or more assessment areas within which examiners would evaluate CRA performance. In most cases, a bank would delineate a town, municipality, county, some other political subdivision, or an MSA where its main office, branches, and deposit-taking ATMs are located and a substantial portion of its loans are made as an assessment area. If a bank chooses, however, its assessment areas would not need to coincide with the boundaries of one or more political subdivisions (*e.g.,* counties, cities, and towns or MSAs), so long as the adjustments to those boundaries reflect the areas that the bank reasonably could serve, meet regulatory requirements, and do not arbitrarily exclude LMI census tracts.

Large banks, and in some circumstances, other banks, would need to collect, maintain, and report certain data related to the proposed performance tests and standards. The OCC would make bank CRA data available through individual and aggregate disclosure statements. Banks also would make CRA-related

[64] The OCC has CRA rulewriting authority for both Federal and State savings associations, in addition to national banks. *See* 12 U.S.C. 2905.

information available in their public files and inform the public through a CRA notice in specified locations.

For a more detailed description of the 1995 Rules, please see the **SUPPLEMENTAL INFORMATION** section of the **Federal Register** document at: 60 FR 22156 (May 4, 1995).[65] The following is a summary of key provisions of the proposed rules.

- *Performance tests and standards.*[66]
  - The proposed rules' small bank (*i.e.,* banks with less than $330 million in assets) performance standards would establish a retail lending test for assessing CRA performance. The proposed small bank lending test may also consider CD loans. Qualified investments and CD services could be considered at the bank's option for an ''outstanding'' rating, but only if the bank meets or exceeds the lending test criteria in the small bank performance standards.
  - The proposed rules' ISB (*i.e.,* banks with asset sizes of at least $330 million and less than $1.322 billion) performance standards would assess CRA performance under the small bank retail lending test and a CD test. The ISB CD test would evaluate all CD activities together.
  - The proposed rules would establish lending, investment, and service tests applicable to large banks (*i.e.,* banks with $1.322 billion or more in assets). The large bank lending and service tests would consider both retail and CD activity, while the investment test would focus on qualified investments as defined in the proposed rules.
  - The proposed rules would evaluate wholesale and limited purpose banks under a CD test that considers activities in a bank's broader statewide or regional area as activities that benefit the bank's assessment area. Activities outside of the broader statewide or regional area also would be considered if the bank has been responsive to needs in its assessment area.
  - All banks could elect to be evaluated under a strategic plan that sets out measurable goals for lending, investment, and services, as applicable, to achieve a ''satisfactory'' or ''outstanding'' rating. The bank would develop a strategic plan with community input and the plan would be approved by the bank's primary regulator.
- *DOICP.* Under the proposal MLA and SCRA violations would not be included in the proposed rules' enumerated list of violations considered in evaluating banks' CRA performance. Nonetheless, examiners would continue to consider these violations in banks' CRA performance evaluations based on guidance that predated the June 2020 Rule.[67]
- *Retail and CD Activities.* Examiners would evaluate banks' CRA performance based on retail lending (*i.e.,* home mortgage loans, small business loans, small farm loans, and consumer loans, as applicable) and CD loans, qualified investments, and CD services as defined in the proposed rules and considered in the applicable performance tests and standards.
- *Assessment Areas.*
  - Banks would delineate assessment areas that generally
    - Include the geographies (*i.e.,* census tracts) where a bank has its main office, branches, and deposit-taking automated teller machines as well as the surrounding geographies where the bank has originated or purchased a substantial portion of its loans; and
    - Consist of one or more MSAs, metropolitan divisions, or political subdivisions with banks permitted to adjust the boundaries of their assessment areas to include only the portion of the political subdivision that banks can reasonably be expected to serve; and
  - Assessment areas would be required to
    - Consist of whole geographies,
    - Not reflect illegal discrimination,
    - Not arbitrarily exclude LMI geographies, and
    - Not extend substantially beyond an MSA or State boundary unless the bank's assessment area is in a multistate MSA.
- *Data collection, recordkeeping, and reporting.*
  - Banks other than small banks would collect, maintain, and report certain data related to small business loans, small farm loans, CD loans, and assessment areas. Banks subject to the Home Mortgage Disclosure Act (HMDA) reporting requirements[68] also would report home mortgage lending outside of the MSAs where the bank has a home or branch office. The proposed rules also would include certain optional data collection and reporting.
  - The proposal would reinstate additional public file and public notice requirements eliminated under the June 2020 Rule regarding the content of the public file and the location of the public file and public notices.
- *Ratings.* Examiners would determine ratings as provided in proposed Appendix A.

IV. Transition Considerations

As discussed above, the June 2020 Rule included a transition provision, effective October 1, 2020, to provide for an orderly move to the new regulatory framework. As a result, many aspects of the 1995 Rules remain in effect, limiting the potential disruption associated with the proposed reversion to CRA rules based on the 1995 Rules. Therefore, the OCC is considering an effective date of January 1, 2022, for any final rules, provided they are published by December 1, 2021. A January 1, 2022, effective date would provide all stakeholders with certainty regarding the applicable rules and would eliminate the need for banks to continue to expend resources developing new systems necessary for compliance with the June 2020 Rule.

The OCC recognizes that banks have relied in part on the June 2020 Rule in planning for their ongoing compliance with the CRA. Following publication of any final rules pertaining to this proposal, banks would have a minimum of 30 days, as required by the Administrative Procedures Act,[69] before they would be required to comply with most of the provisions described in the proposed rules. However, given the partial implementation of the June 2020 Rule, its replacement would result in certain changes to the regulatory framework that impact, among other things, how banks would be evaluated and what activities would receive consideration in CRA examinations. The OCC proposes to address such considerations, as discussed below.[70] While the proposal does not include particular transition provisions in the proposed rule text, the OCC invites comment on whether, for purposes of any final rules the OCC should amend the proposed rule text to address any or all of the following transition issues.

[65] The proposed rules also include the 2005 substantive revisions to the 1995 regulatory framework (*e.g.,* the small bank and ISB asset-size thresholds and associated changes and the inclusion of activities to revitalize and stabilize distressed or underserved rural areas and designated in the CD definition) as well as other revisions made to the 1995 Rules since they were adopted by the Agencies. *See* 70 FR 44256 (Aug. 2, 2005).

[66] The applicable proposed performance tests and standards would be based on the asset size of a bank. The asset-size thresholds for determining whether a bank is a large bank, ISB, or small bank would be adjusted annually based on the Consumer Price Index and be aligned with the current asset size thresholds in the Board and FDIC rules. *See* 12 CFR parts 228 and 345.

[67] *See supra* note 53.

[68] 12 CFR part 1003.

[69] Public Law 79–404, 60 Stat. 237 (1946), *codified at* 5 U.S.C. 500 *et seq.*

[70] Information related to the June 2020 Rule implementation is discussed in Section II.C.

A. Bank Type Changes

The June 2020 Rule resulted in a change in bank type for some banks due to changes in the bank asset-size thresholds. For example, certain ISBs became small banks (*i.e.,* banks with assets between $326 million and $600 million) and certain large banks became intermediate banks (*i.e.,* banks with assets between $1.305 billion and $2.5 billion). These banks are subject to different performance standards for activities conducted on or after October 1, 2020, than they were prior to that date. In addition, OCC-regulated large banks under the 1995 Rules that became intermediate banks under the June 2020 Rule were no longer required to collect data for calendar years 2021 forward and report data for calendar years 2022 forward.

Under the proposed rules, many of these banks would transition back to their prior bank type based on the proposed asset-size thresholds (*i.e.,* small banks would be banks with less than $330 million in assets, ISBs would be banks with at least $330 million but less than $1.322 billion, and large banks would be banks with assets of $1.322 billion or more, as adjusted). As a result, reinstated data collection and reporting requirements would apply to banks redesignated as large banks under the proposed rules.

The OCC proposes to treat banks that would transition from ISBs to large banks under the proposed rules consistent with how the OCC has historically treated these banks. Under the 1995 Rules, the OCC would have required banks that transitioned from ISBs to large banks to begin collecting loan data as provided in proposed 12 CFR 25.42 one year after the bank type changed. Therefore, if the proposed rules take effect on January 1, 2022, the OCC would require newly classified large banks to begin collecting data on January 1, 2023, and reporting required and optional data the following year.

For banks that would transition from small bank to ISBs under the proposed rules, the OCC would not provide additional time to transition to the ISB performance standards; however, the OCC would consider the change in bank type as part of the bank's performance context when evaluating the bank's CRA performance. Additionally, the OCC intends to continue to issue bulletins to inform the public of the annual bank asset-size threshold adjustments based on changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W).[71] The OCC requests specific comment on whether:

The OCC should apply its historical policy for newly designated large banks' data collection, recordkeeping, and reporting requirements, with the result that certain large banks under the final rules would not collect data until January 2023 and would not report it until January 2024. In the alternative, should banks that were formerly large banks under the 1995 Rules and that return to large bank status as proposed begin data collection in 2022? Are there alternative transition policies related to data collection, recordkeeping, and reporting requirements that the OCC should consider?

The OCC's plan to consider changes from small bank to ISB bank type as part of performance context is a reasonable means of addressing the transition from the June 2020 Rule to the proposed rules' bank asset-size thresholds.

B. Qualifying Activities

As of the effective date of the final rules, the OCC would rescind the qualifying activities criteria in the June 2020 Rule and replace it with the 1995 Rules' home mortgage loan, small business loan, small farm loan, consumer loan, and CD definitions. Also, as of the effective date of any final rules, the definitions related to the qualifying activities criteria in the June 2020 Rule, including the compensation, distressed area, underserved area, CRA-eligible business, CRA-eligible farm, small loans to businesses, small loans to farms, partially, and primarily definitions would revert to the applicable definitions under the 1995 Rules or be eliminated.

The OCC proposes to address these changes by explaining that OCC-regulated banks would receive consideration in their CRA examinations for activities that met the qualifying activities criteria or definitions that were in effect at the time that the bank conducted those activities. Consistent with the OCC's historical practice, the OCC also would apply this policy to legally binding commitments to lend or invest. For banks or interested parties that received confirmation letters for qualifying activities under the June 2020 Rule, those letters would be applicable while the June 2020 Rule was in effect but would not apply to activities conducted after any final rules' effective date. The OCC believes this policy is reasonable because it honors the qualified status of activities when conducted by the bank. The OCC requests specific comment on whether:

The proposal to consider activities based on whether they qualified at the time the activities were conducted is a reasonable approach to addressing the changes to the type of activities that will receive consideration in CRA examinations.

C. Affiliates

As explained in a January 2021 interpretive letter, under the June 2020 Rule, generally, a bank would not receive CRA consideration for affiliate activities, including activities conducted by the nonbank parent and sister companies of the bank, unless the bank could demonstrate that it provided financing for or otherwise supported the qualifying activities of these affiliates.[72] This policy represented a significant change from how the OCC considered affiliate activities under the 1995 Rules, and, as such, the OCC used the flexibility provided by the transition provision to delay compliance with this aspect of the June 2020 Rule until April 1, 2022.[73]

The proposal would consider affiliate activities consistent with their treatment under the 1995 Rules and the guidance in the Q&As, which permit banks to elect to include affiliate activities in their CRA evaluations, subject to certain limitations. Consequently, the OCC would rescind the January 2021 interpretive letter regarding affiliate activities as of the effective date of any final rules.

D. Outside Assessment Area Activities

Under the 1995 Rules, the agencies provided consideration for activities conducted outside banks' assessment areas in limited circumstances. Specifically, under the 1995 Rules, the performance tests and standards generally provided that the Agencies would evaluate an IDI's CRA performance in its assessment areas.[74] In addition, the 1995 Rules provided that the Agencies may consider CD activities that benefit the broader statewide or regional areas that include

[71] *See* OCC Bulletin 2021–5, Community Reinvestment Act: Bank Type Determinations, Distressed and Underserved Areas, and Banking Industry Compensation Provisions of the June 2020 CRA (January 29, 2021).

[72] OCC Senior Deputy Comptroller and Chief Counsel's Interpretation: Community Reinvestment Act Qualifying (CRA) Activities Conducted by a National Bank's or Savings Association's Subsidiaries and Affiliates, Including Nonbank Parent and Sister Companies of a National Bank or Savings Association Under Certain Circumstances, Can Receive CRA Credit Under the June 2020 CRA Final Rule (January 4, 2021), available at *https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2021/interpretive-letter-affiliates.pdf.*

[73] OCC Bulletin 2020–99, Community Reinvestment Act: Key Provisions of the June 2020 CRA Rule and Frequently Asked Questions (November 9, 2020).

[74] *See* 12 CFR part 25, Appendix C.

an IDI's assessment areas.[75] With respect to wholesale and limited purpose institutions, the 1995 Rules provided that the Agencies may consider CD activities nationwide if the IDI had adequately addressed the needs of its assessment areas.[76] The Q&As clarified the circumstances in which the Agencies would provide consideration for activities in the broader statewide or regional area but generally did not provide consideration for activities nationwide.[77]

In contrast, the June 2020 Rule provided nationwide consideration of qualifying activities for banks evaluated under the general performance standards. To provide consistency across bank type during the transition period, the OCC also explained in guidance that any OCC-regulated bank may receive consideration for qualifying activities outside of its assessment areas that do not directly or indirectly serve its assessment areas provided certain conditions were met.[78] The OCC requests specific comment on whether:

The OCC should continue to provide consideration for activities that do not directly or indirectly serve a bank's assessment areas or the broader statewide or regional areas that include a bank's assessment areas under the proposed rules. What conditions, if any, should be met in order for the OCC to provide consideration for activities that do not directly or indirectly serve a bank's assessment areas or the broader statewide or regional areas that include a bank's assessment areas?

E. CD Activity Confirmation Process and Illustrative List

Stakeholders generally supported the creation of the qualifying activities confirmation process and illustrative list in the June 2020 Rule. These provisions clarified the activities that would receive consideration in an OCC-regulated bank's CRA examination. Because the qualifying activity confirmation process is procedural and applies facts regarding a potential qualifying activity to qualifying activity criteria set forth in the June 2020 Rule, the OCC could have interpreted and provided guidance on which activities would receive consideration in CRA examinations without codifying the process in the June 2020 Rule.

The OCC is considering whether to implement a qualifying activities confirmation process based on the CD definition in the 1995 Rules, as interpreted through the Q&As, while the OCC is working on the interagency CRA rulemaking process. Providing for a qualifying activities confirmation process outside of the CRA rules would be the least disruptive outcome for banks and interested parties that have found the process beneficial. Moreover, maintaining a confirmation process is not inconsistent with the Board ANPR, which included a suggestion related to a qualifying activities confirmation process. The OCC also would maintain the illustrative list of qualifying activities on its website as a reference for banks to determine whether activities that they conducted while the June 2020 Rule was in effect are eligible for CRA consideration; however, activities included on the illustrative list may not receive consideration if conducted after the effective date of the final rules. The OCC requests specific comment on whether:

The OCC should implement a CD activity confirmation process during the period between the rescission of the June 2020 Rule and the issuance of prospective joint interagency rules.

F. Strategic Plans

The June 2020 Rule revised the requirements for requesting approval of a strategic plan. Among other things, the June 2020 Rule permitted banks requesting approval for a strategic plan to include target market assessment areas. For purposes of any final rules, the OCC proposes to maintain any strategic plans approved by the OCC under the June 2020 Rule and would not require these banks to amend their strategic plans. The OCC believes that permitting strategic plan banks to maintain their target market assessment areas is not inconsistent with proposed 12 CFR 25.41 and would cause the least disruption during the transition from the OCC's June 2020 Rule to any future interagency final rules. The OCC requests specific comment on whether:

The OCC's proposed plan to maintain strategic plans approved under the June 2020 Rule with target market assessment areas is a reasonable way of addressing this transition consideration.

G. June 2020 Rule Subpart E

Subpart E of the June 2020 Rule includes the data collection, recordkeeping, and reporting provisions. Most of these provisions were subject to a January 1, 2023, or January 1, 2024, compliance date, and, therefore, do not require any transition. However, the changes to the public file requirements took effect October 1, 2020. These changes reduced the information required in the public file and changed the requirements for how an OCC-regulated bank makes the public file available to the public, including permitting these banks to make the public file available solely on their websites. Under the proposed rules, banks would need to include additional information in their public file and make the file available at their main office, and for interstate banks, at one branch in each State and more limited information at each branch. Since the proposed rules would impose additional public file content and availability requirements, the OCC expects to provide in the final rules that banks would comply with these requirements no later than three months after the effective date of the final rules. The OCC specifically requests comment on whether:

Three months is sufficient time for banks to make the changes necessary to comply with the public file content and availability requirements of the proposed rules.

The OCC should enact a transition period for the public notice requirements that took effect on October 1, 2020.

H. Summary Chart of Proposed Transition Considerations

OCC Rescind and Replace Transition Considerations

Description of the proposed provision	Proposed transition plan
Bank Type Changes	
Certain small banks (*i.e.,* banks with at least $330 million but less than $600 million in assets).	These small banks would become ISBs as of the effective date of any final rules. The change in bank type would be considered as part of performance context when evaluating the bank's CRA performance. No additional transition time would be provided for adjusting to the ISB performance standards.

[75] *Id.*

[76] *Id.*

[77] Q&A § ____.12(h)—6; Q&A § ____.12(h)—7; and Q&A § ____.23(a)—2.

[78] *See* OCC Bulletin 2020–99, Community Reinvestment Act: Key Provisions of the June 2020 CRA Rule and Frequently Asked Questions (November 9, 2020).

OCC RESCIND AND REPLACE TRANSITION CONSIDERATIONS—Continued

Description of the proposed provision	Proposed transition plan
Certain ISBs (*i.e.,* banks with at least $1.322 billion but not more than $2.5 billion in assets).	These ISBs would become large banks as of the effective date of any final rules. The newly classified large banks would (1) begin collecting data to be evaluated under the large bank lending, investment, and service tests on January 1, 2023, and (2) report required and optional data the following year.
Qualifying Activities	
Consideration of retail lending (*i.e.,* home mortgage loans, small loans to businesses, small loans to farms, and consumer loans) and CD activities (*i.e.,* CD loans, CD investments, and CD services—including legally binding commitments to lend and invest) and their related definitions.	The proposed rules' revised definitions would apply as of the effective date of any final rules. Banks would receive consideration in their CRA examinations for activities that met the qualifying activities criteria or definitions that were in effect at the time the bank conducted these activities.
Qualifying activities confirmation letters issued under the June 2020 Rule.	Confirmation letters would be applicable while the June 2020 Rule was in effect but would not apply to activities conducted after any final rules' effective date.
Affiliates	
Affiliate activities conducted after the effective date of any final rules.	Banks may to elect to include affiliate activities in their CRA evaluations, subject to certain limitations. The OCC also would rescind the January 2021 interpretive letter regarding affiliate activities as of the effective date of any final rules.
Outside Assessment Area Activities	
Consideration of activities conducted outside bank assessment areas.	The OCC is considering whether it should continue to provide consideration for activities that do not directly or indirectly serve a bank's assessment areas or the broader statewide or regional areas that include a bank's assessment areas.
CD Activity Confirmation Process and Illustrative List	
CD activities confirmation process	The OCC is considering providing a process for qualifying activities confirmation outside of the CRA rules.
Qualifying activities illustrative list ..	The OCC would maintain the qualifying activities illustrative list on its website as a reference for banks to determine whether activities conducted while the June 2020 Rule was in effect are eligible for CRA consideration.
Strategic Plans	
Strategic plans with target market assessment areas approved under the June 2020 Rule.	The OCC would maintain any strategic plans approved by the OCC under the June 2020 Rule and would not require these banks to amend their strategic plans.
June 2020 Rule Subpart E	
CRA public file content and location requirements.	Banks would comply with the additional public file content and availability requirements no later than three months after the effective date of any final rules.
CRA notice requirements	The OCC would not provide additional time for banks to comply with the CRA notice requirements.

V. Interagency Rulemaking

As noted, on July 20, 2021, the Agencies announced they had initiated an interagency rulemaking, stating that they are ''committed to working together to jointly strengthen and modernize rules implementing the [CRA].'' [79] The Agencies' announcement stated that ''[j]oint agency action will best achieve a consistent, modernized framework across all banks to help meet the credit needs of the communities in which they do business, including [LMI] neighborhoods.'' [80] A reinstatement of the 1995 Rules would allow for an orderly transition to future, modernized CRA rules.

VI. Regulatory Analysis

A. Regulatory Flexibility Act

In general, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration for purposes of the RFA to include commercial banks and savings institutions with total assets of $600 million or less and trust companies with total assets of $41.5 million of less). However, under section 605(b) of the RFA, this analysis is not required if the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** along with its rule.

The OCC currently supervises approximately 669 small entities, all of which may be impacted by the proposed rules. The OCC estimates the annual cost for small entities to comply with the proposed rules would be approximately $1,824 per bank ($114 per hour × 16 hours). In general, the

[79] *See supra* note 7.

[80] *See supra* note 7.

OCC classifies the economic impact on an individual small entity as significant if the total estimated impact in one year is greater than 5 percent of the small entity's total annual salaries and benefits or greater than 2.5 percent of the small entity's total non-interest expense.

Based on these thresholds, the OCC estimates that, if implemented, the proposed rules would have a significant economic impact on zero small entities, which is not a substantial number. Therefore, the OCC certifies that the proposed rules would not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

Certain provisions of the proposed rules contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC reviewed the proposed rules and determined that it revises certain information collection requirements previously cleared by OMB under OMB Control No. 1557–0160. The OCC has submitted the revised information collection to OMB for review under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR1320).

Under the proposed rules:

- 12 CFR 25.25(b) and 195.25(b)—Requests for designation as a wholesale or limited purpose bank would be made in writing with the OCC at least three months prior to the proposed effective date of the designation.
- 12 CFR 25.27 and 195.27—Strategic plans would be submitted at least three months prior to proposed effective dates. Plans would include measurable goals and address all the performance categories. Plans would include a description of informal efforts to solicit public suggestions, any written public comments received, and if revised pursuant to public comment, a copy of the initial plan. Amendments to plans could be submitted in the case of a change in material circumstances.
- 12 CFR 25.42(a) and 195.42(a)—Large banks would collect and maintain certain small business and small farm loan data in a machine-readable form and report it annually pursuant to 12 CFR 25.42(b)(1) and 195.42(b)(1).
- 12 CFR 25.42(b)(2) and 195.42(b)(2)—Large banks would report annually in machine readable form the aggregate number and aggregate amount of community development loans originated or purchased.
- 12 CFR 25.42(b)(3) and 195.42(b)(3)—Large banks, if subject to reporting under HMDA, would report the location of each home mortgage loan application, origination, or purchase outside the MSAs where the bank has a home or branch office.
- 12 CFR 25.42(c)(1) and 195.42(c)(1)—All banks could collect and maintain in machine readable form certain data for consumer loans originated or purchased by a bank for consideration under the lending test. Under 12 CFR 25.42(c)(2)–(4) and 195.42(c)(2)–(4), other information could be included concerning a bank's lending performance, including additional loan distribution data.
- 12 CFR 25.42(d) and 195.42(d)—Banks that elect to have the OCC consider loans by an affiliate, for purposes of the lending or community development test or an approved strategic plan, would collect, maintain, and report the data that the bank would have collected, maintained, and reported pursuant to 12 CFR 25.42(a)–(c) or 195.42(a)–(c), respectively, had the loans been originated or purchased by the bank. For home mortgage loans, the bank would also be prepared to identify the home mortgage loans reported under HMDA by the affiliate.
- 12 CFR 25.42(e) and 195.42(e)—Banks that elect to have the OCC consider community development loans by a consortium or a third party, for purposes of the lending or community development tests or an approved strategic plan, would report for those loans the data that the bank would have reported under 12 CFR 25.42(b)(2) or 195.42(b)(2), respectively, had the loans been originated or purchased by the bank.
- 12 CFR 25.42(f) and 195.42(f)—Small banks that qualify for evaluation under the small bank performance standards but elect evaluation under the lending, investment, and service tests would collect, maintain, and report the data required for other banks under 12 CFR 25.42(a), 25.42(b), 195.42(a), and 195.42(b).
- 12 CFR 25.42(g) and 195.42(g)—Banks, except those that were a small bank during the prior calendar year, would collect and report to the OCC by March 1 each year a list for each assessment area showing the geographies within the area.
- 12 CFR 25.43(a) and 195.43(a)—All banks would maintain a public file that contains with certain specified details: all written comments and responses; a copy of the public section of the bank's most recent CRA performance evaluation; a list of the bank's branches; a list of the branches opened or closed; a list of services offered; and a map of each assessment area delineated by the bank.
- 12 CFR 25.43(b) and 195.43(b)—Large banks would include in their public files certain information pertaining to the institution and its affiliates, if applicable, for each of the prior two calendar years. If the bank has elected to have one or more categories of its consumer loans considered under the lending test, for each of these categories, they would include the number and amount of loans: to low-, moderate-, middle-, and upper-income individuals; located in low-, moderate-, middle-, and upper-income census tracts; and located inside the bank's assessment area(s) and outside the bank's assessment area(s); and their CRA Disclosure Statement. A bank required to report home mortgage loan data pursuant to 12 CFR part 1003 would include a written notice that the institution's HMDA Disclosure Statement may be obtained on the Consumer Financial Protection Bureau's (Bureau's) website. A bank that elected to have the OCC consider the mortgage lending of an affiliate would include the name of the affiliate and a written notice that the affiliate's HMDA Disclosure Statement may be obtained at the Bureau's website. A small bank or a bank that was a small bank during the prior calendar year would include: its loan-to-deposit ratio for each quarter of the prior calendar year and, at its option, additional data on its loan-to-deposit ratio; and the information required for other banks by 12 CFR 24.43(b)(1) or 195.43(b)(1), if it has elected to be evaluated under the lending, investment, and service tests. A bank that has been approved to be assessed under a strategic plan would include in its public file a copy of that plan. A bank that received a less than satisfactory rating during its most recent examination would include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The bank would update the description quarterly.
- 12 CFR 25.43(c) through (e) and 12 CFR 195.43(c) through (e)—A bank would make available to the public for inspection upon request and at no cost the information required in these provisions at the main office or branch as specified. Upon request, bank would provide copies, either on paper or in

another form acceptable to the person making the request, of the information in its public file. A bank would ensure that this information is current as of April 1 of each year.

OCC Title of Information Collection: Community Reinvestment Act.

Frequency: On Occasion.

Affected Public: Businesses or other for-profit.

Total estimated annual burden: 113,351 hours.

Comments are invited on:

a. Whether the collections of information are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

b. The accuracy or the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

C. Unfunded Mandates Reform Act of 1995

The OCC considers whether a proposed rule includes a Federal mandate, under the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*), that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year ($158 million as adjusted annually for inflation). The UMRA does not apply to rules that incorporate requirements specifically set forth in law.

The OCC estimates that expenditures associated with mandates in the proposed rules would be approximately $6 million. Therefore, the OCC concludes the proposed rules would not result in an expenditure of $158 million or more annually by State, local, and tribal governments or by the private sector.

D. Riegle Community Development and Regulatory Improvement Act

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4802(a)), in determining the effective date and administrative compliance requirements for new rules that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC will consider, consistent with principles of safety and soundness and the public interest (1) any administrative burdens that the proposed rules would place on depository institutions, including small depository institutions and customers of depository institutions; and (2) the benefits of the proposed rules. The OCC requests comment on (1) any administrative burdens that the proposed rules would place on depository institutions, including small depository institutions, and their customers and (2) the benefits of the proposed rules that the OCC should consider in determining the effective date and administrative compliance requirements for any final rules.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 195

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons discussed in the preamble, and under the authority of 12 U.S.C. 93a, the Office of the Comptroller of the Currency proposes to amend 12 CFR part 25 and proposes to add part 195 as follows:

■ 1. Part 25 is revised to read as follows:

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

Subpart A—General

Subpart B—Standards for Assessing Performance

Subpart C—Records, Reporting, and Disclosure Requirements

Subpart D [Reserved]

Subpart E—Prohibition Against Use of Interstate Branches Primarily for Deposit Production

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2908, and 3101 through 3111.

Subpart A—General

§ 25.11 Authority, purposes, and scope.

(a) *Authority and OMB control number*—(1) Authority. The authority for subparts A, B, C, D, and E is 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2907, and 3101 through 3111.

(2) OMB control number. The information collection requirements contained in this part were approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 1557–0160.

(b) *Purposes.* In enacting the Community Reinvestment Act (CRA), the Congress required each appropriate Federal financial supervisory agency to assess an institution's record of helping to meet the credit needs of the local communities in which the institution is chartered, consistent with the safe and sound operation of the institution, and to take this record into account in the agency's evaluation of an application for a deposit facility by the institution. This part is intended to carry out the purposes of the CRA by:

(1) Establishing the framework and criteria by which the Office of the Comptroller of the Currency (OCC) assesses a bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank; and

(2) Providing that the OCC takes that record into account in considering certain applications.

(c) *Scope*—(1) General. This part applies to all banks except as provided in paragraphs (c)(2) and (3) of this section.

(2) Federal branches and agencies. (i) This part applies to all insured Federal branches and to any Federal branch that is uninsured that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)).

(ii) Except as provided in paragraph (c)(2)(i) of this section, this part does not apply to Federal branches that are uninsured, limited Federal branches, or Federal agencies, as those terms are defined in part 28 of this chapter.

(3) Certain special purpose banks. This part does not apply to special purpose banks that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incident to their specialized operations. These banks include banker's banks, as defined in 12 U.S.C. 24 (Seventh), and banks that engage only in one or more of the following activities: Providing cash management controlled disbursement services or serving as correspondent banks, trust companies, or clearing agents.

§ 25.12 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company. The term ''control'' has the meaning given to that term in 12 U.S.C. 1841(a)(2), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

(b) *Area median income* means:

(1) The median family income for the MSA, if a person or geography is located in an MSA, or for the metropolitan division, if a person or geography is located in an MSA that has been subdivided into metropolitan divisions; or

(2) The statewide nonmetropolitan median family income, if a person or geography is located outside an MSA.

(c) *Assessment area* means a geographic area delineated in accordance with § 25.41.

(d) *Automated teller machine (ATM)* means an automated, unstaffed banking facility owned or operated by, or operated exclusively for, the bank at which deposits are received, cash dispersed, or money lent.

(e) *Bank* means a national bank (including a Federal branch as defined in part 28 of this chapter) with Federally insured deposits, except as provided in § 25.11(c).

(f) *Branch* means a staffed banking facility authorized as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local business or nonprofit organization.

(g) *Community development* means:

(1) Affordable housing (including multifamily rental housing) for low- or moderate-income individuals;

(2) Community services targeted to low- or moderate-income individuals;

(3) Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of $1 million or less; or

(4) Activities that revitalize or stabilize—

(i) Low-or moderate-income geographies;

(ii) Designated disaster areas; or

(iii) Distressed or underserved nonmetropolitan middle-income geographies designated by the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and OCC, based on—

(A) Rates of poverty, unemployment, and population loss; or

(B) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

(h) *Community development loan* means a loan that:

(1) Has as its primary purpose community development; and

(2) Except in the case of a wholesale or limited purpose bank:

(i) Has not been reported or collected by the bank or an affiliate for consideration in the bank's assessment as a home mortgage, small business, small farm, or consumer loan, unless the loan is for a multifamily dwelling (as defined in § 1003.2(n) of this title); and

(ii) Benefits the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(i) *Community development service* means a service that:

(1) Has as its primary purpose community development;

(2) Is related to the provision of financial services; and

(3) Has not been considered in the evaluation of the bank's retail banking services under § 25.24(d).

(j) *Consumer loan* means a loan to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. Consumer loans include the following categories of loans:

(1) *Motor vehicle loan,* which is a consumer loan extended for the purchase of and secured by a motor vehicle;

(2) *Credit card loan,* which is a line of credit for household, family, or other personal expenditures that is accessed by a borrower's use of a ''credit card,'' as this term is defined in § 1026.2 of this title;

(3) *Other secured consumer loan,* which is a secured consumer loan that is not included in one of the other categories of consumer loans; and

(4) *Other unsecured consumer loan,* which is an unsecured consumer loan that is not included in one of the other categories of consumer loans.

(k) *Geography* means a census tract delineated by the United States Bureau of the Census in the most recent decennial census.

(l) *Home mortgage loan* means a closed-end mortgage loan or an open-end line of credit as these terms are defined under § 1003.2 of this title, and that is not an excluded transaction under § 1003.3(c)(1) through (10) and (13) of this title.

(m) *Income level* includes:

(1) *Low-income,* which means an individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent, in the case of a geography.

(2) *Moderate-income,* which means an individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 and less than 80 percent, in the case of a geography.

(3) *Middle-income,* which means an individual income that is at least 80 percent and less than 120 percent of the area median income, or a median family income that is at least 80 and less than 120 percent, in the case of a geography.

(4) *Upper-income,* which means an individual income that is 120 percent or more of the area median income, or a median family income that is 120 percent or more, in the case of a geography.

(n) *Limited purpose bank* means a bank that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as

a limited purpose bank is in effect, in accordance with § 25.25(b).

(o) *Loan location.* A loan is located as follows:

(1) A consumer loan is located in the geography where the borrower resides;

(2) A home mortgage loan is located in the geography where the property to which the loan relates is located; and

(3) A small business or small farm loan is located in the geography where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.

(p) *Loan production office* means a staffed facility, other than a branch, that is open to the public and that provides lending-related services, such as loan information and applications.

(q) *Metropolitan division* means a metropolitan division as defined by the Director of the Office of Management and Budget.

(r) *MSA* means a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(s) *Nonmetropolitan area* means any area that is not located in an MSA.

(t) *Qualified investment* means a lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

(u) *Small bank*—(1) Definition. *Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.322 billion. *Intermediate small bank* means a small bank with assets of at least $330 million as of December 31 of both of the prior two calendar years and less than $1.322 billion as of December 31 of either of the prior two calendar years.

(2) *Adjustment.* The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the OCC, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

(v) *Small business loan* means a loan included in ''loans to small businesses'' as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(w) *Small farm loan* means a loan included in ''loans to small farms'' as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(x) *Wholesale bank* means a bank that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for which a designation as a wholesale bank is in effect, in accordance with § 25.25(b).

Subpart B—Standards for Assessing Performance

§ 25.21 Performance tests, standards, and ratings, in general.

(a) *Performance tests and standards.* The OCC assesses the CRA performance of a bank in an examination as follows:

(1) *Lending, investment, and service tests.* The OCC applies the lending, investment, and service tests, as provided in §§ 25.22 through 25.24, in evaluating the performance of a bank, except as provided in paragraphs (a)(2), (3), and (4) of this section.

(2) *Community development test for wholesale or limited purpose banks.* The OCC applies the community development test for a wholesale or limited purpose bank, as provided in § 25.25, except as provided in paragraph (a)(4) of this section.

(3) *Small bank performance standards.* The OCC applies the small bank performance standards as provided in § 25.26 in evaluating the performance of a small bank or a bank that was a small bank during the prior calendar year, unless the bank elects to be assessed as provided in paragraphs (a)(1), (2), or (4) of this section. The bank may elect to be assessed as provided in paragraph (a)(1) of this section only if it collects and reports the data required for other banks under § 25.42.

(4) *Strategic plan.* The OCC evaluates the performance of a bank under a strategic plan if the bank submits, and the OCC approves, a strategic plan as provided in § 25.27.

(b) *Performance context.* The OCC applies the tests and standards in paragraph (a) of this section and also considers whether to approve a proposed strategic plan in the context of:

(1) Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant data pertaining to a bank's assessment area(s);

(2) Any information about lending, investment, and service opportunities in the bank's assessment area(s) maintained by the bank or obtained from community organizations, state, local, and tribal governments, economic development agencies, or other sources;

(3) The bank's product offerings and business strategy as determined from data provided by the bank;

(4) Institutional capacity and constraints, including the size and financial condition of the bank, the economic climate (national, regional, and local), safety and soundness limitations, and any other factors that significantly affect the bank's ability to provide lending, investments, or services in its assessment area(s);

(5) The bank's past performance and the performance of similarly situated lenders;

(6) The bank's public file, as described in § 25.43, and any written comments about the bank's CRA performance submitted to the bank or the OCC; and

(7) Any other information deemed relevant by the OCC.

(c) *Assigned ratings.* The OCC assigns to a bank one of the following four ratings pursuant to § 25.28 and appendix A of this part: ''outstanding''; ''satisfactory''; ''needs to improve''; or ''substantial noncompliance'' as provided in 12 U.S.C. 2906(b)(2). The rating assigned by the OCC reflects the bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank.

(d) *Safe and sound operations.* This part and the CRA do not require a bank to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the OCC anticipates banks can meet the standards of this part with safe and sound loans, investments, and services on which the banks expect to make a profit. Banks are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals, only if consistent with safe and sound operations.

(e) *Low-cost education loans provided to low-income borrowers.* In assessing and taking into account the record of a bank under this part, the OCC considers, as a factor, low-cost education loans originated by the bank to borrowers, particularly in its assessment area(s), who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, ''low-cost education loans'' means any education loan, as defined in section 140(a)(7) of the Truth in Lending Act (15 U.S.C. 1650(a)(7)) (including a loan under a state or local education loan program), originated by the bank for a student at an ''institution of higher education,'' as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of

comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

(f) *Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions.* In assessing and taking into account the record of a nonminority-owned and nonwomen-owned bank under this part, the OCC considers as a factor capital investment, loan participation, and other ventures undertaken by the bank in cooperation with minority- and women-owned financial institutions and low-income credit unions. Such activities must help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the bank's assessment area(s) or the broader statewide or regional area that includes the bank's assessment area(s).

§ 25.22 Lending test.

(a) *Scope of test.* (1) The lending test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a bank's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a bank's business, the OCC will evaluate the bank's consumer lending in one or more of the following categories: Motor vehicle, credit card, other secured, and other unsecured loans. In addition, at a bank's option, the OCC will evaluate one or more categories of consumer lending, if the bank has collected and maintained, as required in § 25.42(c)(1), the data for each category that the bank elects to have the OCC evaluate.

(2) The OCC considers originations and purchases of loans. The OCC will also consider any other loan data the bank may choose to provide, including data on loans outstanding, commitments and letters of credit.

(3) A bank may ask the OCC to consider loans originated or purchased by consortia in which the bank participates or by third parties in which the bank has invested only if the loans meet the definition of community development loans and only in accordance with paragraph (d) of this section. The OCC will not consider these loans under any criterion of the lending test except the community development lending criterion.

(b) *Performance criteria.* The OCC evaluates a bank's lending performance pursuant to the following criteria:

(1) *Lending activity.* The number and amount of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, in the bank's assessment area(s);

(2) *Geographic distribution.* The geographic distribution of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on the loan location, including:

(i) The proportion of the bank's lending in the bank's assessment area(s);

(ii) The dispersion of lending in the bank's assessment area(s); and

(iii) The number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the bank's assessment area(s);

(3) *Borrower characteristics.* The distribution, particularly in the bank's assessment area(s), of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on borrower characteristics, including the number and amount of:

(i) Home mortgage loans to low-, moderate-, middle-, and upper-income individuals;

(ii) Small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(iii) Small business and small farm loans by loan amount at origination; and

(iv) Consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals;

(4) *Community development lending.* The bank's community development lending, including the number and amount of community development loans, and their complexity and innovativeness; and

(5) *Innovative or flexible lending practices.* The bank's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies.

(c) *Affiliate lending.* (1) At a bank's option, the OCC will consider loans by an affiliate of the bank, if the bank provides data on the affiliate's loans pursuant to § 25.42.

(2) The OCC considers affiliate lending subject to the following constraints:

(i) No affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase; and

(ii) If a bank elects to have the OCC consider loans within a particular lending category made by one or more of the bank's affiliates in a particular assessment area, the bank shall elect to have the OCC consider, in accordance with paragraph (c)(1) of this section, all the loans within that lending category in that particular assessment area made by all of the bank's affiliates.

(3) The OCC does not consider affiliate lending in assessing a bank's performance under paragraph (b)(2)(i) of this section.

(d) *Lending by a consortium or a third party.* Community development loans originated or purchased by a consortium in which the bank participates or by a third party in which the bank has invested:

(1) Will be considered, at the bank's option, if the bank reports the data pertaining to these loans under § 25.42(b)(2); and

(2) May be allocated among participants or investors, as they choose, for purposes of the lending test, except that no participant or investor:

(i) May claim a loan origination or loan purchase if another participant or investor claims the same loan origination or purchase; or

(ii) May claim loans accounting for more than its percentage share (based on the level of its participation or investment) of the total loans originated by the consortium or third party.

(e) *Lending performance rating.* The OCC rates a bank's lending performance as provided in appendix A of this part.

§ 25.23 Investment test.

(a) *Scope of test.* The investment test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(b) *Exclusion.* Activities considered under the lending or service tests may not be considered under the investment test.

(c) *Affiliate investment.* At a bank's option, the OCC will consider, in its assessment of a bank's investment performance, a qualified investment made by an affiliate of the bank, if the qualified investment is not claimed by any other institution.

(d) *Disposition of branch premises.* Donating, selling on favorable terms, or making available on a rent-free basis a branch of the bank that is located in a predominantly minority neighborhood to a minority depository institution or women's depository institution (as these terms are defined in 12 U.S.C. 2907(b)) will be considered as a qualified investment.

(e) *Performance criteria.* The OCC evaluates the investment performance of a bank pursuant to the following criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs; and

(4) The degree to which the qualified investments are not routinely provided by private investors.

(f) *Investment performance rating.* The OCC rates a bank's investment performance as provided in appendix A of this part.

§ 25.24 Service test.

(a) *Scope of test.* The service test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) by analyzing both the availability and effectiveness of a bank's systems for delivering retail banking services and the extent and innovativeness of its community development services.

(b) *Area(s) benefitted.* Community development services must benefit a bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(c) *Affiliate service.* At a bank's option, the OCC will consider, in its assessment of a bank's service performance, a community development service provided by an affiliate of the bank, if the community development service is not claimed by any other institution.

(d) *Performance criteria—retail banking services.* The OCC evaluates the availability and effectiveness of a bank's systems for delivering retail banking services, pursuant to the following criteria:

(1) The current distribution of the bank's branches among low-, moderate-, middle-, and upper-income geographies;

(2) In the context of its current distribution of the bank's branches, the bank's record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;

(3) The availability and effectiveness of alternative systems for delivering retail banking services (*e.g.,* ATMs, ATMs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs) in low- and moderate-income geographies and to low- and moderate-income individuals; and

(4) The range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies.

(e) *Performance criteria—community development services.* The OCC evaluates community development services pursuant to the following criteria:

(1) The extent to which the bank provides community development services; and

(2) The innovativeness and responsiveness of community development services.

(f) *Service performance rating.* The OCC rates a bank's service performance as provided in appendix A of this part.

§ 25.25 Community development test for wholesale or limited purpose banks.

(a) *Scope of test.* The OCC assesses a wholesale or limited purpose bank's record of helping to meet the credit needs of its assessment area(s) under the community development test through its community development lending, qualified investments, or community development services.

(b) *Designation as a wholesale or limited purpose bank.* In order to receive a designation as a wholesale or limited purpose bank, a bank shall file a request, in writing, with the OCC, at least three months prior to the proposed effective date of the designation. If the OCC approves the designation, it remains in effect until the bank requests revocation of the designation or until one year after the OCC notifies the bank that the OCC has revoked the designation on its own initiative.

(c) *Performance criteria.* The OCC evaluates the community development performance of a wholesale or limited purpose bank pursuant to the following criteria:

(1) The number and amount of community development loans (including originations and purchases of loans and other community development loan data provided by the bank, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services;

(2) The use of innovative or complex qualified investments, community development loans, or community development services and the extent to which the investments are not routinely provided by private investors; and

(3) The bank's responsiveness to credit and community development needs.

(d) *Indirect activities.* At a bank's option, the OCC will consider in its community development performance assessment:

(1) Qualified investments or community development services provided by an affiliate of the bank, if the investments or services are not claimed by any other institution; and

(2) Community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in § 25.22(c) and (d).

(e) *Benefit to assessment area(s)*—(1) *Benefit inside assessment area(s).* The OCC considers all qualified investments, community development loans, and community development services that benefit areas within the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(2) *Benefit outside assessment area(s).* The OCC considers the qualified investments, community development loans, and community development services that benefit areas outside the bank's assessment area(s), if the bank has adequately addressed the needs of its assessment area(s).

(f) *Community development performance rating.* The OCC rates a bank's community development performance as provided in appendix A of this part.

§ 25.26 Small bank performance standards.

(a) *Performance criteria*—(1) *Small banks that are not intermediate small banks.* The OCC evaluates the record of a small bank that is not, or that was not during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

(2) *Intermediate small banks.* The OCC evaluates the record of a small bank that is, or that was during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

(b) *Lending test.* A small bank's lending performance is evaluated pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans; and

(5) The bank's record of taking action, if warranted, in response to written complaints about its performance in

helping to meet credit needs in its assessment area(s).

(c) *Community development test.* An intermediate small bank's community development performance also is evaluated pursuant to the following criteria:

(1) The number and amount of community development loans;

(2) The number and amount of qualified investments;

(3) The extent to which the bank provides community development services; and

(4) The bank's responsiveness through such activities to community development lending, investment, and services needs.

(d) *Small bank performance rating.* The OCC rates the performance of a bank evaluated under this section as provided in appendix A of this part.

§ 25.27 Strategic plan.

(a) *Alternative election.* The OCC will assess a bank's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(1) The bank has submitted the plan to the OCC as provided for in this section;

(2) The OCC has approved the plan;

(3) The plan is in effect; and

(4) The bank has been operating under an approved plan for at least one year.

(b) *Data reporting.* The OCC's approval of a plan does not affect the bank's obligation, if any, to report data as required by § 25.42.

(c) *Plans in general*—(1) *Term.* A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable goals under which the OCC will evaluate the bank's performance.

(2) *Multiple assessment areas.* A bank with more than one assessment area may prepare a single plan for all of its assessment areas or one or more plans for one or more of its assessment areas.

(3) *Treatment of affiliates.* Affiliated institutions may prepare a joint plan if the plan provides measurable goals for each institution. Activities may be allocated among institutions at the institutions' option, provided that the same activities are not considered for more than one institution.

(d) *Public participation in plan development.* Before submitting a plan to the OCC for approval, a bank shall:

(1) Informally seek suggestions from members of the public in its assessment area(s) covered by the plan while developing the plan;

(2) Once the bank has developed a plan, formally solicit public comment on the plan for at least 30 days by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan; and

(3) During the period of formal public comment, make copies of the plan available for review by the public at no cost at all offices of the bank in any assessment area covered by the plan and provide copies of the plan upon request for a reasonable fee to cover copying and mailing, if applicable.

(e) *Submission of plan.* The bank shall submit its plan to the OCC at least three months prior to the proposed effective date of the plan. The bank shall also submit with its plan a description of its informal efforts to seek suggestions from members of the public, any written public comment received, and, if the plan was revised in light of the comment received, the initial plan as released for public comment.

(f) *Plan content*—(1) *Measurable goals.* (i) A bank shall specify in its plan measurable goals for helping to meet the credit needs of each assessment area covered by the plan, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals, through lending, investment, and services, as appropriate.

(ii) A bank shall address in its plan all three performance categories and, unless the bank has been designated as a wholesale or limited purpose bank, shall emphasize lending and lending-related activities. Nevertheless, a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its assessment area(s), considering public comment and the bank's capacity and constraints, product offerings, and business strategy.

(2) *Confidential information.* A bank may submit additional information to the OCC on a confidential basis, but the goals stated in the plan must be sufficiently specific to enable the public and the OCC to judge the merits of the plan.

(3) *Satisfactory and outstanding goals.* A bank shall specify in its plan measurable goals that constitute ''satisfactory'' performance. A plan may specify measurable goals that constitute ''outstanding'' performance. If a bank submits, and the OCC approves, both ''satisfactory'' and ''outstanding'' performance goals, the OCC will consider the bank eligible for an ''outstanding'' performance rating.

(4) *Election if satisfactory goals not substantially met.* A bank may elect in its plan that, if the bank fails to meet substantially its plan goals for a satisfactory rating, the OCC will evaluate the bank's performance under the lending, investment, and service tests, the community development test, or the small bank performance standards, as appropriate.

(g) *Plan approval*—(1) *Timing.* The OCC will act upon a plan within 60 calendar days after the OCC receives the complete plan and other material required under paragraph (e) of this section. If the OCC fails to act within this time period, the plan shall be deemed approved unless the OCC extends the review period for good cause.

(2) *Public participation.* In evaluating the plan's goals, the OCC considers the public's involvement in formulating the plan, written public comment on the plan, and any response by the bank to public comment on the plan.

(3) *Criteria for evaluating plan.* The OCC evaluates a plan's measurable goals using the following criteria, as appropriate:

(i) The extent and breadth of lending or lending-related activities, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels, the extent of community development lending, and the use of innovative or flexible lending practices to address credit needs;

(ii) The amount and innovativeness, complexity, and responsiveness of the bank's qualified investments; and

(iii) The availability and effectiveness of the bank's systems for delivering retail banking services and the extent and innovativeness of the bank's community development services.

(h) *Plan amendment.* During the term of a plan, a bank may request the OCC to approve an amendment to the plan on grounds that there has been a material change in circumstances. The bank shall develop an amendment to a previously approved plan in accordance with the public participation requirements of paragraph (d) of this section.

(i) *Plan assessment.* The OCC approves the goals and assesses performance under a plan as provided for in appendix A of this part.

§ 25.28 Assigned ratings.

(a) *Ratings in general.* Subject to paragraphs (b) and (c) of this section, the OCC assigns to a bank a rating of ''outstanding,'' ''satisfactory,'' ''needs to improve,'' or ''substantial noncompliance'' based on the bank's performance under the lending, investment and service tests, the community development test, the small bank performance standards, or an approved strategic plan, as applicable.

(b) *Lending, investment, and service tests.* The OCC assigns a rating for a bank assessed under the lending, investment, and service tests in accordance with the following principles:

(1) A bank that receives an ''outstanding'' rating on the lending test receives an assigned rating of at least ''satisfactory'';

(2) A bank that receives an ''outstanding'' rating on both the service test and the investment test and a rating of at least ''high satisfactory'' on the lending test receives an assigned rating of ''outstanding''; and

(3) No bank may receive an assigned rating of ''satisfactory'' or higher unless it receives a rating of at least ''low satisfactory'' on the lending test.

(c) *Effect of evidence of discriminatory or other illegal credit practices.* (1) The OCC's evaluation of a bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank or in any assessment area by any affiliate whose loans have been considered as part of the bank's lending performance. In connection with any type of lending activity described in § 25.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

(i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(ii) Violations of the Home Ownership and Equity Protection Act;

(iii) Violations of section 5 of the Federal Trade Commission Act;

(iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and

(v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the bank's assigned rating, the OCC considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the bank (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

§ 25.29 Effect of CRA performance on applications.

(a) *CRA performance.* Among other factors, the OCC takes into account the record of performance under the CRA of each applicant bank in considering an application for:

(1) The establishment of a domestic branch;

(2) The relocation of the main office or a branch;

(3) Under the Bank Merger Act (12 U.S.C. 1828(c)), the merger or consolidation with or the acquisition of assets or assumption of liabilities of an insured depository institution; and

(4) The conversion of an insured depository institution to a national bank charter.

(b) *Charter application.* An applicant (other than an insured depository institution) for a national bank charter shall submit with its application a description of how it will meet its CRA objectives. The OCC takes the description into account in considering the application and may deny or condition approval on that basis.

(c) *Interested parties.* The OCC takes into account any views expressed by interested parties that are submitted in accordance with the OCC's procedures set forth in part 5 of this chapter in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.

(d) *Denial or conditional approval of application.* A bank's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

(e) *Insured depository institution.* For purposes of this section, the term ''insured depository institution'' has the meaning given to that term in 12 U.S.C. 1813.

Subpart C—Records, Reporting, and Disclosure Requirements

§ 25.41 Assessment area delineation.

(a) *In general.* A bank shall delineate one or more assessment areas within which the OCC evaluates the bank's record of helping to meet the credit needs of its community. The OCC does not evaluate the bank's delineation of its assessment area(s) as a separate performance criterion, but the OCC reviews the delineation for compliance with the requirements of this section.

(b) *Geographic area(s) for wholesale or limited purpose banks.* The assessment area(s) for a wholesale or limited purpose bank must consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the bank has its main office, branches, and deposit-taking ATMs.

(c) *Geographic area(s) for other banks.* The assessment area(s) for a bank other than a wholesale or limited purpose bank must:

(1) Consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns; and

(2) Include the geographies in which the bank has its main office, its branches, and its deposit-taking ATMs, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans (including home mortgage loans, small business and small farm loans, and any other loans the bank chooses, such as those consumer loans on which the bank elects to have its performance assessed).

(d) *Adjustments to geographic area(s).* A bank may adjust the boundaries of its assessment area(s) to include only the portion of a political subdivision that it reasonably can be expected to serve. An adjustment is particularly appropriate in the case of an assessment area that otherwise would be extremely large, of unusual configuration, or divided by significant geographic barriers.

(e) *Limitations on the delineation of an assessment area.* Each bank's assessment area(s):

(1) Must consist only of whole geographies;

(2) May not reflect illegal discrimination;

(3) May not arbitrarily exclude low- or moderate-income geographies, taking into account the bank's size and financial condition; and

(4) May not extend substantially beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. If a bank serves a geographic area that extends substantially beyond a state boundary, the bank shall delineate separate assessment areas for the areas in each state. If a bank serves a geographic area that extends substantially beyond an MSA boundary, the bank shall delineate separate assessment areas for the areas inside and outside the MSA.

(f) *Banks serving military personnel.* Notwithstanding the requirements of this section, a bank whose business

predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area may delineate its entire deposit customer base as its assessment area.

(g) *Use of assessment area(s).* The OCC uses the assessment area(s) delineated by a bank in its evaluation of the bank's CRA performance unless the OCC determines that the assessment area(s) do not comply with the requirements of this section.

§ 25.42 Data collection, reporting, and disclosure.

(a) *Loan information required to be collected and maintained.* A bank, except a small bank, shall collect, and maintain in machine readable form (as prescribed by the OCC) until the completion of its next CRA examination, the following data for each small business or small farm loan originated or purchased by the bank:

(1) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(2) The loan amount at origination;

(3) The loan location; and

(4) An indicator whether the loan was to a business or farm with gross annual revenues of $1 million or less.

(b) *Loan information required to be reported.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall report annually by March 1 to the OCC in machine readable form (as prescribed by the OCC) the following data for the prior calendar year:

(1) *Small business and small farm loan data.* For each geography in which the bank originated or purchased a small business or small farm loan, the aggregate number and amount of loans:

(i) With an amount at origination of $100,000 or less;

(ii) With amount at origination of more than $100,000 but less than or equal to $250,000;

(iii) With an amount at origination of more than $250,000; and

(iv) To businesses and farms with gross annual revenues of $1 million or less (using the revenues that the bank considered in making its credit decision);

(2) *Community development loan data.* The aggregate number and aggregate amount of community development loans originated or purchased; and

(3) *Home mortgage loans.* If the bank is subject to reporting under part 1003 of this title, the location of each home mortgage loan application, origination, or purchase outside the MSAs in which the bank has a home or branch office (or outside any MSA) in accordance with the requirements of part 1003 of this title.

(c) *Optional data collection and maintenance*—(1) *Consumer loans.* A bank may collect and maintain in machine readable form (as prescribed by the OCC) data for consumer loans originated or purchased by the bank for consideration under the lending test. A bank may maintain data for one or more of the following categories of consumer loans: Motor vehicle, credit card, other secured, and other unsecured. If the bank maintains data for loans in a certain category, it shall maintain data for all loans originated or purchased within that category. The bank shall maintain data separately for each category, including for each loan:

(i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(ii) The loan amount at origination or purchase;

(iii) The loan location; and

(iv) The gross annual income of the borrower that the bank considered in making its credit decision.

(2) *Other loan data.* At its option, a bank may provide other information concerning its lending performance, including additional loan distribution data.

(d) *Data on affiliate lending.* A bank that elects to have the OCC consider loans by an affiliate, for purposes of the lending or community development test or an approved strategic plan, shall collect, maintain, and report for those loans the data that the bank would have collected, maintained, and reported pursuant to paragraphs (a), (b), and (c) of this section had the loans been originated or purchased by the bank. For home mortgage loans, the bank shall also be prepared to identify the home mortgage loans reported under part 1003 of this title by the affiliate.

(e) *Data on lending by a consortium or a third party.* A bank that elects to have the OCC consider community development loans by a consortium or third party, for purposes of the lending or community development tests or an approved strategic plan, shall report for those loans the data that the bank would have reported under paragraph (b)(2) of this section had the loans been originated or purchased by the bank.

(f) *Small banks electing evaluation under the lending, investment, and service tests.* A bank that qualifies for evaluation under the small bank performance standards but elects evaluation under the lending, investment, and service tests shall collect, maintain, and report the data required for other banks pursuant to paragraphs (a) and (b) of this section.

(g) *Assessment area data.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall collect and report to the OCC by March 1 of each year a list for each assessment area showing the geographies within the area.

(h) *CRA Disclosure Statement.* The OCC prepares annually for each bank that reports data pursuant to this section a CRA Disclosure Statement that contains, on a state-by-state basis:

(1) For each county (and for each assessment area smaller than a county) with a population of 500,000 persons or fewer in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in low-, moderate-, middle-, and upper-income geographies;

(ii) A list grouping each geography according to whether the geography is low-, moderate-, middle-, or upper-income;

(iii) A list showing each geography in which the bank reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(2) For each county (and for each assessment area smaller than a county) with a population in excess of 500,000 persons in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in geographies with median income relative to the area median income of less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(ii) A list grouping each geography in the county or assessment area according to whether the median income in the geography relative to the area median income is less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or

more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(iii) A list showing each geography in which the bank reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(3) The number and amount of small business and small farm loans located inside each assessment area reported by the bank and the number and amount of small business and small farm loans located outside the assessment area(s) reported by the bank; and

(4) The number and amount of community development loans reported as originated or purchased.

(i) *Aggregate disclosure statements.* The OCC, in conjunction with the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation, prepares annually, for each MSA or metropolitan division (including an MSA or metropolitan division that crosses a state boundary) and the nonmetropolitan portion of each state, an aggregate disclosure statement of small business and small farm lending by all institutions subject to reporting under this part or parts 195, 228, or 345 of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the OCC may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

(j) *Central data depositories.* The OCC makes the aggregate disclosure statements, described in paragraph (i) of this section, and the individual bank CRA Disclosure Statements, described in paragraph (h) of this section, available to the public at central data depositories. The OCC publishes a list of the depositories at which the statements are available.

§ 25.43 Content and availability of public file.

(a) *Information available to the public.* A bank shall maintain a public file that includes the following information:

(1) All written comments received from the public for the current year and each of the prior two calendar years that specifically relate to the bank's performance in helping to meet community credit needs, and any response to the comments by the bank, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the bank or publication of which would violate specific provisions of law;

(2) A copy of the public section of the bank's most recent CRA Performance Evaluation prepared by the OCC. The bank shall place this copy in the public file within 30 business days after its receipt from the OCC;

(3) A list of the bank's branches, their street addresses, and geographies;

(4) A list of branches opened or closed by the bank during the current year and each of the prior two calendar years, their street addresses, and geographies;

(5) A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the bank's branches and descriptions of material differences in the availability or cost of services at particular branches, if any. At its option, a bank may include information regarding the availability of alternative systems for delivering retail banking services (*e.g.,* ATMs, ATMs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs);

(6) A map of each assessment area showing the boundaries of the area and identifying the geographies contained within the area, either on the map or in a separate list; and

(7) Any other information the bank chooses.

(b) *Additional information available to the public*—(1) *Banks other than small banks.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall include in its public file the following information pertaining to the bank and its affiliates, if applicable, for each of the prior two calendar years:

(i) If the bank has elected to have one or more categories of its consumer loans considered under the lending test, for each of these categories, the number and amount of loans:

(A) To low-, moderate-, middle-, and upper-income individuals;

(B) Located in low-, moderate-, middle-, and upper-income census tracts; and

(C) Located inside the bank's assessment area(s) and outside the bank's assessment area(s); and

(ii) The bank's CRA Disclosure Statement. The bank shall place the statement in the public file within three business days of its receipt from the OCC.

(2) *Banks required to report Home Mortgage Disclosure Act (HMDA) data.* A bank required to report home mortgage loan data pursuant part 1003 of this title shall include in its public file a written notice that the institution's HMDA Disclosure Statement may be obtained on the Consumer Financial Protection Bureau's (Bureau's) website at *www.consumerfinance.gov/hmda.* In addition, a bank that elected to have the OCC consider the mortgage lending of an affiliate shall include in its public file the name of the affiliate and a written notice that the affiliate's HMDA Disclosure Statement may be obtained at the Bureau's website. The bank shall place the written notice(s) in the public file within three business days after receiving notification from the Federal Financial Institutions Examination Council of the availability of the disclosure statement(s).

(3) *Small banks.* A small bank or a bank that was a small bank during the prior calendar year shall include in its public file:

(i) The bank's loan-to-deposit ratio for each quarter of the prior calendar year and, at its option, additional data on its loan-to-deposit ratio; and

(ii) The information required for other banks by paragraph (b)(1) of this section, if the bank has elected to be evaluated under the lending, investment, and service tests.

(4) *Banks with strategic plans.* A bank that has been approved to be assessed under a strategic plan shall include in its public file a copy of that plan. A bank need not include information submitted to the OCC on a confidential basis in conjunction with the plan.

(5) *Banks with less than satisfactory ratings.* A bank that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The bank shall update the description quarterly.

(c) *Location of public information.* A bank shall make available to the public for inspection upon request and at no cost the information required in this section as follows:

(1) At the main office and, if an interstate bank, at one branch office in each state, all information in the public file; and

(2) At each branch:

(i) A copy of the public section of the bank's most recent CRA Performance Evaluation and a list of services provided by the branch; and

(ii) Within five calendar days of the request, all the information in the public file relating to the assessment area in which the branch is located.

(d) *Copies.* Upon request, a bank shall provide copies, either on paper or in another form acceptable to the person making the request, of the information in its public file. The bank may charge a reasonable fee not to exceed the cost of copying and mailing (if applicable).

(e) *Updating.* Except as otherwise provided in this section, a bank shall ensure that the information required by this section is current as of April 1 of each year.

§ 25.44 Public notice by banks.

A bank shall provide in the public lobby of its main office and each of its branches the appropriate public notice set forth in appendix B of this part. Only a branch of a bank having more than one assessment area shall include the bracketed material in the notice for branch offices. Only a bank that is an affiliate of a holding company shall include the next to the last sentence of the notices. A bank shall include the last sentence of the notices only if it is an affiliate of a holding company that is not prevented by statute from acquiring additional banks.

§ 25.45 Publication of planned examination schedule.

The OCC publishes at least 30 days in advance of the beginning of each calendar quarter a list of banks scheduled for CRA examinations in that quarter.

Subpart D [Reserved]

Subpart E—Prohibition Against Use of Interstate Branches Primarily for Deposit Production

§ 25.61 Purpose and scope.

(a) *Purpose.* The purpose of this subpart is to implement section 109 (12 U.S.C. 1835a) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act).

(b) *Scope.* (1) This subpart applies to any national bank that has operated a covered interstate branch for a period of at least one year, and any foreign bank that has operated a covered interstate branch that is a Federal branch for a period of at least one year.

(2) This subpart describes the requirements imposed under 12 U.S.C. 1835a, which requires the appropriate Federal banking agencies (the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation) to prescribe uniform rules that prohibit a bank from using any authority to engage in interstate branching pursuant to the Interstate Act, or any amendment made by the Interstate Act to any other provision of law, primarily for the purpose of deposit production.

§ 25.62 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Bank* means, unless the context indicates otherwise:

(1) A national bank; and

(2) A foreign bank as that term is defined in 12 U.S.C. 3101(7) and 12 CFR 28.11(i).

(b) *Covered interstate branch* means:

(1) Any branch of a national bank, and any Federal branch of a foreign bank, that:

(i) Is established or acquired outside the bank's home State pursuant to the interstate branching authority granted by the Interstate Act or by any amendment made by the Interstate Act to any other provision of law; or

(ii) Could not have been established or acquired outside of the bank's home State but for the establishment or acquisition of a branch described in paragraph (b)(1)(i) of this section; and

(2) Any bank or branch of a bank controlled by an out-of-State bank holding company.

(c) *Federal branch* means Federal branch as that term is defined in 12 U.S.C. 3101(6) and 12 CFR 28.11(i).

(d) *Home State* means:

(1) With respect to a State bank, the State that chartered the bank;

(2) With respect to a national bank, the State in which the main office of the bank is located;

(3) With respect to a bank holding company, the State in which the total deposits of all banking subsidiaries of such company are the largest on the later of:

(i) July 1, 1966; or

(ii) The date on which the company becomes a bank holding company under the Bank Holding Company Act;

(4) With respect to a foreign bank:

(i) For purposes of determining whether a U.S. branch of a foreign bank is a covered interstate branch, the home State of the foreign bank as determined in accordance with 12 U.S.C. 3103(c) and 12 CFR 28.11(o); and

(ii) For purposes of determining whether a branch of a U.S. bank controlled by a foreign bank is a covered interstate branch, the State in which the total deposits of all banking subsidiaries of such foreign bank are the largest on the later of:

(A) July 1, 1966; or

(B) The date on which the foreign bank becomes a bank holding company under the Bank Holding Company Act.

(e) *Host State* means a State in which a covered interstate branch is established or acquired.

(f) *Host state loan-to-deposit ratio* generally means, with respect to a particular host state, the ratio of total loans in the host state relative to total deposits from the host state for all banks (including institutions covered under the definition of ''bank'' in 12 U.S.C. 1813(a)(1)) that have that state as their home state, as determined and updated periodically by the appropriate Federal banking agencies and made available to the public.

(g) *Out-of-State bank holding company* means, with respect to any State, a bank holding company whose home State is another State.

(h) *State* means state as that term is defined in 12 U.S.C. 1813(a)(3).

(i) *Statewide loan-to-deposit ratio* means, with respect to a bank, the ratio of the bank's loans to its deposits in a state in which the bank has one or more covered interstate branches, as determined by the OCC.

§ 25.63 Loan-to-deposit ratio screen.

(a) *Application of screen.* Beginning no earlier than one year after a covered interstate branch is acquired or established, the OCC will consider whether the bank's statewide loan-to-deposit ratio is less than 50 percent of the relevant host State loan-to-deposit ratio.

(b) *Results of screen.* (1) If the OCC determines that the bank's statewide loan-to-deposit ratio is 50 percent or more of the host state loan-to-deposit ratio, no further consideration under this subpart is required.

(2) If the OCC determines that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, or if reasonably available data are insufficient to calculate the bank's statewide loan-to-deposit ratio, the OCC will make a credit needs determination for the bank as provided in § 25.64.

§ 25.64 Credit needs determination.

(a) *In general.* The OCC will review the loan portfolio of the bank and determine whether the bank is reasonably helping to meet the credit needs of the communities in the host state that are served by the bank.

(b) *Guidelines.* The OCC will use the following considerations as guidelines when making the determination pursuant to paragraph (a) of this section:

(1) Whether covered interstate branches were formerly part of a failed or failing depository institution;

(2) Whether covered interstate branches were acquired under

circumstances where there was a low loan-to-deposit ratio because of the nature of the acquired institution's business or loan portfolio;

(3) Whether covered interstate branches have a high concentration of commercial or credit card lending, trust services, or other specialized activities, including the extent to which the covered interstate branches accept deposits in the host state;

(4) The CRA ratings received by the bank, if any;

(5) Economic conditions, including the level of loan demand, within the communities served by the covered interstate branches;

(6) The safe and sound operation and condition of the bank; and

(7) The OCC's CRA regulations (subparts A through D of this part) and interpretations of those regulations.

§ 25.65 Sanctions.

(a) *In general.* If the OCC determines that a bank is not reasonably helping to meet the credit needs of the communities served by the bank in the host state, and that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, the OCC:

(1) May order that a bank's covered interstate branch or branches be closed unless the bank provides reasonable assurances to the satisfaction of the OCC, after an opportunity for public comment, that the bank has an acceptable plan under which the bank will reasonably help to meet the credit needs of the communities served by the bank in the host state; and

(2) Will not permit the bank to open a new branch in the host state that would be considered to be a covered interstate branch unless the bank provides reasonable assurances to the satisfaction of the OCC, after an opportunity for public comment, that the bank will reasonably help to meet the credit needs of the community that the new branch will serve.

(b) *Notice prior to closure of a covered interstate branch.* Before exercising the OCC's authority to order the bank to close a covered interstate branch, the OCC will issue to the bank a notice of the OCC's intent to order the closure and will schedule a hearing within 60 days of issuing the notice.

(c) *Hearing.* The OCC will conduct a hearing scheduled under paragraph (b) of this section in accordance with the provisions of 12 U.S.C. 1818(h) and 12 CFR part 19.

Appendix A to Part 25—Ratings

(a) *Ratings in general.* (1) In assigning a rating, the OCC evaluates a bank's performance under the applicable performance criteria in this part, in accordance with §§ 25.21 and 25.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

(2) A bank's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The bank's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as follows.

(b) *Banks evaluated under the lending, investment, and service tests*—(1) *Lending performance rating.* The OCC assigns each bank's lending performance one of the five following ratings.

(i) *Outstanding.* The OCC rates a bank's lending performance ''outstanding'' if, in general, it demonstrates:

(A) Excellent responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A substantial majority of its loans are made in its assessment area(s);

(C) An excellent geographic distribution of loans in its assessment area(s);

(D) An excellent distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) An excellent record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Extensive use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It is a leader in making community development loans.

(ii) *High satisfactory.* The OCC rates a bank's lending performance ''high satisfactory'' if, in general, it demonstrates:

(A) Good responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A high percentage of its loans are made in its assessment area(s);

(C) A good geographic distribution of loans in its assessment area(s);

(D) A good distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) A good record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a relatively high level of community development loans.

(iii) *Low satisfactory.* The OCC rates a bank's lending performance ''low satisfactory'' if, in general, it demonstrates:

(A) Adequate responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) An adequate percentage of its loans are made in its assessment area(s);

(C) An adequate geographic distribution of loans in its assessment area(s);

(D) An adequate distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) An adequate record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Limited use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made an adequate level of community development loans.

(iv) *Needs to improve.* The OCC rates a bank's lending performance ''needs to improve'' if, in general, it demonstrates:

(A) Poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A small percentage of its loans are made in its assessment area(s);

(C) A poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) A poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Little use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a low level of community development loans.

(v) *Substantial noncompliance.* The OCC rates a bank's lending performance as being in ''substantial noncompliance'' if, in general, it demonstrates:

(A) A very poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A very small percentage of its loans are made in its assessment area(s);

(C) A very poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A very poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) A very poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) No use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made few, if any, community development loans.

(2) *Investment performance rating.* The OCC assigns each bank's investment performance one of the five following ratings.

(i) *Outstanding.* The OCC rates a bank's investment performance ''outstanding'' if, in general, it demonstrates:

(A) An excellent level of qualified investments, particularly those that are not routinely provided by private investors, often in a leadership position;

(B) Extensive use of innovative or complex qualified investments; and

(C) Excellent responsiveness to credit and community development needs.

(ii) *High satisfactory.* The OCC rates a bank's investment performance ''high satisfactory'' if, in general, it demonstrates:

(A) A significant level of qualified investments, particularly those that are not routinely provided by private investors, occasionally in a leadership position;

(B) Significant use of innovative or complex qualified investments; and

(C) Good responsiveness to credit and community development needs.

(iii) *Low satisfactory.* The OCC rates a bank's investment performance ''low satisfactory'' if, in general, it demonstrates:

(A) An adequate level of qualified investments, particularly those that are not routinely provided by private investors, although rarely in a leadership position;

(B) Occasional use of innovative or complex qualified investments; and

(C) Adequate responsiveness to credit and community development needs.

(iv) *Needs to improve.* The OCC rates a bank's investment performance ''needs to improve'' if, in general, it demonstrates:

(A) A poor level of qualified investments, particularly those that are not routinely provided by private investors;

(B) Rare use of innovative or complex qualified investments; and

(C) Poor responsiveness to credit and community development needs.

(v) *Substantial noncompliance.* The OCC rates a bank's investment performance as being in ''substantial noncompliance'' if, in general, it demonstrates:

(A) Few, if any, qualified investments, particularly those that are not routinely provided by private investors;

(B) No use of innovative or complex qualified investments; and

(C) Very poor responsiveness to credit and community development needs.

(3) *Service performance rating.* The OCC assigns each bank's service performance one of the five following ratings.

(i) *Outstanding.* The OCC rates a bank's service performance ''outstanding'' if, in general, the bank demonstrates:

(A) Its service delivery systems are readily accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has improved the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) are tailored to the convenience and needs of its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It is a leader in providing community development services.

(ii) *High satisfactory.* The OCC rates a bank's service performance ''high satisfactory'' if, in general, the bank demonstrates:

(A) Its service delivery systems are accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides a relatively high level of community development services.

(iii) *Low satisfactory.* The OCC rates a bank's service performance ''low satisfactory'' if, in general, the bank demonstrates:

(A) Its service delivery systems are reasonably accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has generally not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides an adequate level of community development services.

(iv) *Needs to improve.* The OCC rates a bank's service performance ''needs to improve'' if, in general, the bank demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has adversely affected the accessibility its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides a limited level of community development services.

(v) *Substantial noncompliance.* The OCC rates a bank's service performance as being in ''substantial noncompliance'' if, in general, the bank demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to significant portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has significantly adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that significantly inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides few, if any, community development services.

(c) *Wholesale or limited purpose banks.* The OCC assigns each wholesale or limited purpose bank's community development performance one of the four following ratings.

(1) *Outstanding.* The OCC rates a wholesale or limited purpose bank's community development performance ''outstanding'' if, in general, it demonstrates:

(i) A high level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Extensive use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Excellent responsiveness to credit and community development needs in its assessment area(s).

(2) *Satisfactory.* The OCC rates a wholesale or limited purpose bank's community development performance ''satisfactory'' if, in general, it demonstrates:

(i) An adequate level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Occasional use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Adequate responsiveness to credit and community development needs in its assessment area(s).

(3) *Needs to improve.* The OCC rates a wholesale or limited purpose bank's community development performance as ''needs to improve'' if, in general, it demonstrates:

(i) A poor level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Rare use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Poor responsiveness to credit and community development needs in its assessment area(s).

(4) *Substantial noncompliance.* The OCC rates a wholesale or limited purpose bank's community development performance in ''substantial noncompliance'' if, in general, it demonstrates:

(i) Few, if any, community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) No use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Very poor responsiveness to credit and community development needs in its assessment area(s).

(d) *Banks evaluated under the small bank performance standards*—(1) *Lending test ratings.* (i) *Eligibility for a satisfactory lending test rating.* The OCC rates a small bank's lending performance ''satisfactory'' if, in general, the bank demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, other lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;

(B) A majority of its loans and, as appropriate, other lending-related activities, are in its assessment area;

(C) A distribution of loans to and, as appropriate, other lending-related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the bank's assessment area(s).

(ii) *Eligibility for an ''outstanding'' lending test rating.* A small bank that meets each of the standards for a ''satisfactory'' rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of ''outstanding.''

(iii) *Needs to improve or substantial noncompliance ratings.* A small bank may also receive a lending test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standard for a ''satisfactory'' rating.

(2) *Community development test ratings for intermediate small banks*—(i) *Eligibility for a satisfactory community development test rating.* The OCC rates an intermediate small bank's community development performance ''satisfactory'' if the bank demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the bank's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the bank's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The OCC rates an intermediate small bank's community development performance ''outstanding'' if the bank demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the bank's capacity and the need and availability of such opportunities for community development in the bank's assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate small bank may also receive a community development test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

(3) *Overall rating*—(i) *Eligibility for a satisfactory overall rating.* No intermediate small bank may receive an assigned overall rating of ''satisfactory'' unless it receives a rating of at least ''satisfactory'' on both the lending test and the community development test.

(ii) *Eligibility for an outstanding overall rating.* (A) An intermediate small bank that receives an ''outstanding'' rating on one test and at least ''satisfactory'' on the other test may receive an assigned overall rating of ''outstanding.''

(B) A small bank that is not an intermediate small bank that meets each of the standards for a ''satisfactory'' rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of ''outstanding.'' In assessing whether a bank's performance is ''outstanding,'' the OCC considers the extent to which the bank exceeds each of the performance standards for a ''satisfactory'' rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial noncompliance overall ratings.* A small bank may also receive a rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

(e) *Strategic plan assessment and rating*—(1) *Satisfactory goals.* The OCC approves as ''satisfactory'' measurable goals that adequately help to meet the credit needs of the bank's assessment area(s).

(2) *Outstanding goals.* If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as ''satisfactory,'' the OCC will approve those goals as ''outstanding.''

(3) *Rating.* The OCC assesses the performance of a bank operating under an approved plan to determine if the bank has met its plan goals:

(i) If the bank substantially achieves its plan goals for a satisfactory rating, the OCC will rate the bank's performance under the plan as ''satisfactory.''

(ii) If the bank exceeds its plan goals for a satisfactory rating and substantially achieves its plan goals for an outstanding rating, the OCC will rate the bank's performance under the plan as ''outstanding.''

(iii) If the bank fails to meet substantially its plan goals for a satisfactory rating, the OCC will rate the bank as either ''needs to improve'' or ''substantial noncompliance,'' depending on the extent to which it falls short of its plan goals, unless the bank elected in its plan to be rated otherwise, as provided in § 25.27(f)(4).

Appendix B to Part 25—CRA Notice

(a) *Notice for main offices and, if an interstate bank, one branch office in each state.*

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Comptroller of the Currency evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The Comptroller also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA

Performance Evaluation, prepared by the Comptroller; and comments received from the public relating to our performance in helping to meet community credit needs, as well as our responses to those comments. You may review this information today.

At least 30 days before the beginning of each quarter, the Comptroller publishes a nationwide list of the banks that are scheduled for CRA examination in that quarter. This list is available from the Deputy Comptroller (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and Deputy Comptroller (address). Your letter, together with any response by us, will be considered by the Comptroller in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Deputy Comptroller. You may also request from the Deputy Comptroller an announcement of our applications covered by the CRA filed with the Comptroller. We are an affiliate of (name of holding company), a bank holding company. You may request from the (title of responsible official), Federal Reserve Bank of _____ (address) an announcement of applications covered by the CRA filed by bank holding companies.

(b) *Notice for branch offices.*

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Comptroller of the Currency evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The Comptroller also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA. You may review today the public section of our most recent CRA evaluation, prepared by the Comptroller, and a list of services provided at this branch. You may also have access to the following additional information, which we will make available to you at this branch within five calendar days after you make a request to us: (1) A map showing the assessment area containing this branch, which is the area in which the Comptroller evaluates our CRA performance in this community; (2) information about our branches in this assessment area; (3) a list of services we provide at those locations; (4) data on our lending performance in this assessment area; and (5) copies of all written comments received by us that specifically relate to our CRA performance in this assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

[If you would like to review information about our CRA performance in other communities served by us, the public file for our entire bank is available at (name of office located in state), located at (address).]

At least 30 days before the beginning of each quarter, the Comptroller publishes a nationwide list of the banks that are scheduled for CRA examination in that quarter. This list is available from the Deputy Comptroller (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and Deputy Comptroller (address). Your letter, together with any response by us, will be considered by the Comptroller in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Deputy Comptroller. You may also request from the Deputy Comptroller an announcement of our applications covered by the CRA filed with the Comptroller. We are an affiliate of (name of holding company), a bank holding company. You may request from the (title of responsible official), Federal Reserve Bank of _____ (address) an announcement of applications covered by the CRA filed by bank holding companies.

■ 2. Add 12 CFR part 195 to read as follows:

PART 195—COMMUNITY REINVESTMENT ACT

Subpart A—General

Subpart B—Standards for Assessing Performance

Subpart C—Records, Reporting, and Disclosure Requirements

Authority: 12 U.S.C. 1462a, 1463, 1464, 1814, 1816, 1828(c), 2901 through 2908, and 5412(b)(2)(B).

Subpart A—General

§ 195.11 Authority, purposes, and scope.

(a) *Authority.* This part is issued under the Community Reinvestment Act of 1977 (CRA), as amended (12 U.S.C. 2901 *et seq.*); section 5, as amended, and sections 3, and 4, as added, of the Home Owners' Loan Act of 1933 (12 U.S.C. 1462a, 1463, and 1464); and sections 4, 6, and 18(c), as amended of the Federal Deposit Insurance Act (12 U.S.C. 1814, 1816, 1828(c)).

(b) *Purposes.* In enacting the CRA, the Congress required each appropriate Federal financial supervisory agency to assess an institution's record of helping to meet the credit needs of the local communities in which the institution is chartered, consistent with the safe and sound operation of the institution, and to take this record into account in the agency's evaluation of an application for a deposit facility by the institution. This part is intended to carry out the purposes of the CRA by:

(1) Establishing the framework and criteria by which the appropriate Federal banking agency assesses a savings association's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the savings association; and

(2) Providing that the appropriate Federal banking agency takes that record into account in considering certain applications.

(c) *Scope*—(1) *General.* This part applies to all savings associations except as provided in paragraph (c)(2) of this section.

(2) *Certain special purpose savings associations.* This part does not apply to special purpose savings associations that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incident to their specialized operations. These associations include banker's banks, as defined in 12 U.S.C. 24 (Seventh), and associations that engage only in one or more of the following activities: Providing cash management controlled disbursement services or serving as correspondent associations, trust companies, or clearing agents.

§ 195.12 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company. The term ''control'' has the meaning given to that term in 12 U.S.C. 1841(a)(2), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

(b) *Area median income* means:

(1) The median family income for the MSA, if a person or geography is located

in an MSA, or for the metropolitan division, if a person or geography is located in an MSA that has been subdivided into metropolitan divisions; or

(2) The statewide nonmetropolitan median family income, if a person or geography is located outside an MSA.

(c) *Assessment area* means a geographic area delineated in accordance with § 195.41.

(d) *Automated teller machine (ATM)* means an automated, unstaffed banking facility owned or operated by, or operated exclusively for, the savings association at which deposits are received, cash dispersed, or money lent.

(e) [Reserved]

(f) *Branch* means a staffed banking facility authorized as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local business or nonprofit organization.

(g) *Community development* means:

(1) Affordable housing (including multifamily rental housing) for low or moderate-income individuals;

(2) Community services targeted to low- or moderate-income individuals;

(3) Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of $1 million or less; or

(4) Activities that revitalize or stabilize—

(i) Low- or moderate-income geographies;

(ii) Designated disaster areas; or

(iii) Distressed or underserved, nonmetropolitan middle-income geographies designated by the appropriate Federal banking agency based on—

(A) Rates of poverty, unemployment, and population loss; or

(B) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

(h) *Community development loan* means a loan that:

(1) Has as its primary purpose community development; and

(2) Except in the case of a wholesale or limited purpose savings association:

(i) Has not been reported or collected by the savings association or an affiliate for consideration in the savings association's assessment as a home mortgage, small business, small farm, or consumer loan, unless the loan is for a multifamily dwelling (as defined in § 1003.2(n) of this title); and

(ii) Benefits the savings association's assessment area(s) or a broader statewide or regional area that includes the savings association's assessment area(s).

(i) *Community development service* means a service that:

(1) Has as its primary purpose community development;

(2) Is related to the provision of financial services; and

(3) Has not been considered in the evaluation of the savings association's retail banking services under § 195.24(d).

(j) *Consumer loan* means a loan to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. Consumer loans include the following categories of loans:

(1) *Motor vehicle loan,* which is a consumer loan extended for the purchase of and secured by a motor vehicle;

(2) *Credit card loan,* which is a line of credit for household, family, or other personal expenditures that is accessed by a borrower's use of a ''credit card,'' as this term is defined in § 1026.2 of this title;

(3) *Other secured consumer loan,* which is a secured consumer loan that is not included in one of the other categories of consumer loans; and

(4) *Other unsecured consumer loan,* which is an unsecured consumer loan that is not included in one of the other categories of consumer loans.

(k) *Geography* means a census tract delineated by the United States Bureau of the Census in the most recent decennial census.

(l) *Home mortgage loan* means a closed-end mortgage loan or an open-end line of credit as these terms are defined under § 1003.2 of this title and that is not an excluded transaction under § 1003.3(c)(1) through (10) and (13) of this title.

(m) *Income level* includes:

(1) *Low-income,* which means an individual income that is less than 50 percent of the area median income or a median family income that is less than 50 percent in the case of a geography.

(2) *Moderate-income,* which means an individual income that is at least 50 percent and less than 80 percent of the area median income or a median family income that is at least 50 and less than 80 percent in the case of a geography.

(3) *Middle-income,* which means an individual income that is at least 80 percent and less than 120 percent of the area median income or a median family income that is at least 80 and less than 120 percent in the case of a geography.

(4) *Upper-income,* which means an individual income that is 120 percent or more of the area median income or a median family income that is 120 percent or more in the case of a geography.

(n) *Limited purpose savings association* means a savings association that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited purpose savings association is in effect, in accordance with § 195.25(b).

(o) *Loan location.* A loan is located as follows:

(1) A consumer loan is located in the geography where the borrower resides;

(2) A home mortgage loan is located in the geography where the property to which the loan relates is located; and

(3) A small business or small farm loan is located in the geography where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.

(p) *Loan production office* means a staffed facility, other than a branch, that is open to the public and that provides lending-related services, such as loan information and applications.

(q) *Metropolitan division* means a metropolitan division as defined by the Director of the Office of Management and Budget.

(r) *MSA* means a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(s) *Nonmetropolitan area* means any area that is not located in an MSA.

(t) *Qualified investment* means a lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

(u) *Small savings association*—(1) Definition. *Small savings association* means a savings association that, as of December 31 of either of the prior two calendar years, had assets of less than $1.322 billion. *Intermediate small savings association* means a small savings association with assets of at least $330 million as of December 31 of both of the prior two calendar years and less than $1.322 billion as of December 31 of either of the prior two calendar years.

(2) *Adjustment.* The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the OCC based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical

Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

(v) *Small business loan* means a loan included in ''loans to small businesses'' as defined in the instructions for preparation of the Thrift Financial Report (TFR) or Consolidated Reports of Condition and Income (Call Report), as appropriate.

(w) *Small farm loan* means a loan included in ''loans to small farms'' as defined in the instructions for preparation of the TFR or Call Report, as appropriate.

(x) *Wholesale savings association* means a savings association that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for which a designation as a wholesale savings association is in effect, in accordance with § 195.25(b).

Subpart B—Standards for Assessing Performance

§ 195.21 Performance tests, standards, and ratings, in general.

(a) *Performance tests and standards.* The appropriate Federal banking agency assesses the CRA performance of a savings association in an examination as follows:

(1) *Lending, investment, and service tests.* The appropriate Federal banking agency applies the lending, investment, and service tests, as provided in §§ 195.22 through 195.24, in evaluating the performance of a savings association, except as provided in paragraphs (a)(2), (3), and (4) of this section.

(2) *Community development test for wholesale or limited purpose savings associations.* The appropriate Federal banking agency applies the community development test for a wholesale or limited purpose savings association, as provided in § 195.25, except as provided in paragraph (a)(4) of this section.

(3) *Small savings association performance standards.* The appropriate Federal banking agency applies the small savings association performance standards as provided in § 195.26 in evaluating the performance of a small savings association or a savings association that was a small savings association during the prior calendar year, unless the savings association elects to be assessed as provided in paragraphs (a)(1), (2), or (4) of this section. The savings association may elect to be assessed as provided in paragraph (a)(1) of this section only if it collects and reports the data required for other savings associations under § 195.42.

(4) *Strategic plan.* The appropriate Federal banking agency evaluates the performance of a savings association under a strategic plan if the savings association submits, and the appropriate Federal banking agency approves, a strategic plan as provided in § 195.27.

(b) *Performance context.* The appropriate Federal banking agency applies the tests and standards in paragraph (a) of this section and also considers whether to approve a proposed strategic plan in the context of:

(1) Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant data pertaining to a savings association's assessment area(s);

(2) Any information about lending, investment, and service opportunities in the savings association's assessment area(s) maintained by the savings association or obtained from community organizations, state, local, and tribal governments, economic development agencies, or other sources;

(3) The savings association's product offerings and business strategy as determined from data provided by the savings association;

(4) Institutional capacity and constraints, including the size and financial condition of the savings association, the economic climate (national, regional, and local), safety and soundness limitations, and any other factors that significantly affect the savings association's ability to provide lending, investments, or services in its assessment area(s);

(5) The savings association's past performance and the performance of similarly situated lenders;

(6) The savings association's public file, as described in § 195.43, and any written comments about the savings association's CRA performance submitted to the savings association or the appropriate Federal banking agency; and

(7) Any other information deemed relevant by the appropriate Federal banking agency.

(c) *Assigned ratings.* The appropriate Federal banking agency assigns to a savings association one of the following four ratings pursuant to § 195.28 and appendix A of this part: ''outstanding''; ''satisfactory''; ''needs to improve''; or ''substantial noncompliance,'' as provided in 12 U.S.C. 2906(b)(2). The rating assigned by the appropriate Federal banking agency reflects the savings association's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the savings association.

(d) *Safe and sound operations.* This part and the CRA do not require a savings association to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the appropriate Federal banking agency anticipates savings associations can meet the standards of this part with safe and sound loans, investments, and services on which the savings associations expect to make a profit. Savings associations are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals, only if consistent with safe and sound operations.

(e) *Low-cost education loans provided to low-income borrowers.* In assessing and taking into account the record of a savings association under this part, the appropriate Federal banking agency considers, as a factor, low-cost education loans originated by the savings association to borrowers, particularly in its assessment area(s), who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, ''low-cost education loans'' means any education loan, as defined in section 140(a)(7) of the Truth in Lending Act (15 U.S.C. 1650(a)(7)) (including a loan under a state or local education loan program), originated by the savings association for a student at an ''institution of higher education,'' as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

(f) *Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions.* In assessing and taking into account the record of a nonminority-owned and nonwomen-owned savings association under this part, the appropriate Federal banking agency considers as a factor capital investment, loan participation, and other ventures undertaken by the savings association in cooperation with minority- and women-owned financial institutions and low-

income credit unions. Such activities must help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the savings association's assessment area(s) or the broader statewide or regional area that includes the savings association's assessment area(s).

§ 195.22 Lending test.

(a) *Scope of test.* (1) The lending test evaluates a savings association's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a savings association's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a savings association's business, the appropriate Federal banking agency will evaluate the savings association's consumer lending in one or more of the following categories: Motor vehicle, credit card, other secured, and other unsecured loans. In addition, at a savings association's option, the appropriate Federal banking agency will evaluate one or more categories of consumer lending, if the savings association has collected and maintained, as required in § 195.42(c)(1), the data for each category that the savings association elects to have the appropriate Federal banking agency evaluate.

(2) The appropriate Federal banking agency considers originations and purchases of loans. The appropriate Federal banking agency will also consider any other loan data the savings association may choose to provide, including data on loans outstanding, commitments and letters of credit.

(3) A savings association may ask the appropriate Federal banking agency to consider loans originated or purchased by consortia in which the savings association participates or by third parties in which the savings association has invested only if the loans meet the definition of community development loans and only in accordance with paragraph (d) of this section. The appropriate Federal banking agency will not consider these loans under any criterion of the lending test except the community development lending criterion.

(b) *Performance criteria.* The appropriate Federal banking agency evaluates a savings association's lending performance pursuant to the following criteria:

(1) *Lending activity.* The number and amount of the savings association's home mortgage, small business, small farm, and consumer loans, if applicable, in the savings association's assessment area(s);

(2) *Geographic distribution.* The geographic distribution of the savings association's home mortgage, small business, small farm, and consumer loans, if applicable, based on the loan location, including:

(i) The proportion of the savings association's lending in the savings association's assessment area(s);

(ii) The dispersion of lending in the savings association's assessment area(s); and

(iii) The number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the savings association's assessment area(s);

(3) *Borrower characteristics.* The distribution, particularly in the savings association's assessment area(s), of the savings association's home mortgage, small business, small farm, and consumer loans, if applicable, based on borrower characteristics, including the number and amount of:

(i) Home mortgage loans to low-, moderate-, middle-, and upper-income individuals;

(ii) Small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(iii) Small business and small farm loans by loan amount at origination; and

(iv) Consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals;

(4) *Community development lending.* The savings association's community development lending, including the number and amount of community development loans, and their complexity and innovativeness; and

(5) *Innovative or flexible lending practices.* The savings association's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies.

(c) *Affiliate lending.* (1) At a savings association's option, the appropriate Federal banking agency will consider loans by an affiliate of the savings association, if the savings association provides data on the affiliate's loans pursuant to § 195.42.

(2) The appropriate Federal banking agency considers affiliate lending subject to the following constraints:

(i) No affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase; and

(ii) If a savings association elects to have the appropriate Federal banking agency consider loans within a particular lending category made by one or more of the savings association's affiliates in a particular assessment area, the savings association shall elect to have the appropriate Federal banking agency consider, in accordance with paragraph (c)(1) of this section, all the loans within that lending category in that particular assessment area made by all of the savings association's affiliates.

(3) The appropriate Federal banking agency does not consider affiliate lending in assessing a savings association's performance under paragraph (b)(2)(i) of this section.

(d) *Lending by a consortium or a third party.* Community development loans originated or purchased by a consortium in which the savings association participates or by a third party in which the savings association has invested:

(1) Will be considered, at the savings association's option, if the savings association reports the data pertaining to these loans under § 195.42(b)(2); and

(2) May be allocated among participants or investors, as they choose, for purposes of the lending test, except that no participant or investor:

(i) May claim a loan origination or loan purchase if another participant or investor claims the same loan origination or purchase; or

(ii) May claim loans accounting for more than its percentage share (based on the level of its participation or investment) of the total loans originated by the consortium or third party.

(e) *Lending performance rating.* The appropriate Federal banking agency rates a savings association's lending performance as provided in appendix A of this part.

§ 195.23 Investment test.

(a) *Scope of test.* The investment test evaluates a savings association's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the savings association's assessment area(s).

(b) *Exclusion.* Activities considered under the lending or service tests may not be considered under the investment test.

(c) *Affiliate investment.* At a savings association's option, the appropriate Federal banking agency will consider, in its assessment of a savings association's investment performance, a qualified investment made by an affiliate of the savings association, if the qualified investment is not claimed by any other institution.

(d) *Disposition of branch premises.* Donating, selling on favorable terms, or making available on a rent-free basis a

branch of the savings association that is located in a predominantly minority neighborhood to a minority depository institution or women's depository institution (as these terms are defined in 12 U.S.C. 2907(b)) will be considered as a qualified investment.

(e) *Performance criteria.* The appropriate Federal banking agency evaluates the investment performance of a savings association pursuant to the following criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs; and

(4) The degree to which the qualified investments are not routinely provided by private investors.

(f) *Investment performance rating.* The appropriate Federal banking agency rates a savings association's investment performance as provided in appendix A of this part.

§ 195.24 Service test.

(a) *Scope of test.* The service test evaluates a savings association's record of helping to meet the credit needs of its assessment area(s) by analyzing both the availability and effectiveness of a savings association's systems for delivering retail banking services and the extent and innovativeness of its community development services.

(b) *Area(s) benefitted.* Community development services must benefit a savings association's assessment area(s) or a broader statewide or regional area that includes the savings association's assessment area(s).

(c) *Affiliate service.* At a savings association's option, the appropriate Federal banking agency will consider, in its assessment of a savings association's service performance, a community development service provided by an affiliate of the savings association, if the community development service is not claimed by any other institution.

(d) *Performance criteria—retail banking services.* The appropriate Federal banking agency evaluates the availability and effectiveness of a savings association's systems for delivering retail banking services, pursuant to the following criteria:

(1) The current distribution of the savings association's branches among low-, moderate-, middle-, and upper-income geographies;

(2) In the context of its current distribution of the savings association's branches, the savings association's record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;

(3) The availability and effectiveness of alternative systems for delivering retail banking services (*e.g.,* ATMs, ATMs not owned or operated by or exclusively for the savings association, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs) in low- and moderate-income geographies and to low- and moderate-income individuals; and

(4) The range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies.

(e) *Performance criteria—community development services.* The appropriate Federal banking agency evaluates community development services pursuant to the following criteria:

(1) The extent to which the savings association provides community development services; and

(2) The innovativeness and responsiveness of community development services.

(f) *Service performance rating.* The appropriate Federal banking agency rates a savings association's service performance as provided in appendix A of this part.

§ 195.25 Community development test for wholesale or limited purpose savings associations.

(a) *Scope of test.* The appropriate Federal banking agency assesses a wholesale or limited purpose savings association's record of helping to meet the credit needs of its assessment area(s) under the community development test through its community development lending, qualified investments, or community development services.

(b) *Designation as a wholesale or limited purpose savings association.* In order to receive a designation as a wholesale or limited purpose savings association, a savings association shall file a request, in writing, with the appropriate Federal banking agency, at least three months prior to the proposed effective date of the designation. If the appropriate Federal banking agency approves the designation, it remains in effect until the savings association requests revocation of the designation or until one year after the appropriate Federal banking agency notifies the savings association that the appropriate Federal banking agency has revoked the designation on its own initiative.

(c) *Performance criteria.* The appropriate Federal banking agency evaluates the community development performance of a wholesale or limited purpose savings association pursuant to the following criteria:

(1) The number and amount of community development loans (including originations and purchases of loans and other community development loan data provided by the savings association, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services;

(2) The use of innovative or complex qualified investments, community development loans, or community development services and the extent to which the investments are not routinely provided by private investors; and

(3) The savings association's responsiveness to credit and community development needs.

(d) *Indirect activities.* At a savings association's option, the appropriate Federal banking agency will consider in its community development performance assessment:

(1) Qualified investments or community development services provided by an affiliate of the savings association, if the investments or services are not claimed by any other institution; and

(2) Community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in § 195.22(c) and (d).

(e) *Benefit to assessment area(s)*—(1) *Benefit inside assessment area(s).* The appropriate Federal banking agency considers all qualified investments, community development loans, and community development services that benefit areas within the savings association's assessment area(s) or a broader statewide or regional area that includes the savings association's assessment area(s).

(2) *Benefit outside assessment area(s).* The appropriate Federal banking agency considers the qualified investments, community development loans, and community development services that benefit areas outside the savings association's assessment area(s), if the savings association has adequately addressed the needs of its assessment area(s).

(f) *Community development performance rating.* The appropriate Federal banking agency rates a savings association's community development performance as provided in appendix A of this part.

§ 195.26 Small savings association performance standards.

(a) *Performance criteria*—(1) *Small savings associations that are not intermediate small savings associations.*

The appropriate Federal banking agency evaluates the record of a small savings association that is not, or that was not during the prior calendar year, an intermediate small savings association, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

(2) *Intermediate small savings associations.* The appropriate Federal banking agency evaluates the record of a small savings association that is, or that was during the prior calendar year, an intermediate small savings association, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

(b) *Lending test.* A small savings association's lending performance is evaluated pursuant to the following criteria:

(1) The savings association's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the savings association's assessment area(s);

(3) The savings association's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the savings association's loans; and

(5) The savings association's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(c) *Community development test.* An intermediate small savings association's community development performance also is evaluated pursuant to the following criteria:

(1) The number and amount of community development loans;

(2) The number and amount of qualified investments;

(3) The extent to which the savings association provides community development services; and

(4) The savings association's responsiveness through such activities to community development lending, investment, and services needs.

(d) *Small savings association performance rating.* The appropriate Federal banking agency rates the performance of a savings association evaluated under this section as provided in appendix A of this part.

§ 195.27 Strategic plan.

(a) *Alternative election.* The appropriate Federal banking agency will assess a savings association's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(1) The savings association has submitted the plan to the appropriate Federal banking agency as provided for in this section;

(2) The appropriate Federal banking agency has approved the plan;

(3) The plan is in effect; and

(4) The savings association has been operating under an approved plan for at least one year.

(b) *Data reporting.* The appropriate Federal banking agency's approval of a plan does not affect the savings association's obligation, if any, to report data as required by § 195.42.

(c) *Plans in general*—(1) *Term.* A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable goals under which the appropriate Federal banking agency will evaluate the savings association's performance.

(2) *Multiple assessment areas.* A savings association with more than one assessment area may prepare a single plan for all of its assessment areas or one or more plans for one or more of its assessment areas.

(3) *Treatment of affiliates.* Affiliated institutions may prepare a joint plan if the plan provides measurable goals for each institution. Activities may be allocated among institutions at the institutions' option, provided that the same activities are not considered for more than one institution.

(d) *Public participation in plan development.* Before submitting a plan to the appropriate Federal banking agency for approval, a savings association shall:

(1) Informally seek suggestions from members of the public in its assessment area(s) covered by the plan while developing the plan;

(2) Once the savings association has developed a plan, formally solicit public comment on the plan for at least 30 days by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan; and

(3) During the period of formal public comment, make copies of the plan available for review by the public at no cost at all offices of the savings association in any assessment area covered by the plan and provide copies of the plan upon request for a reasonable fee to cover copying and mailing, if applicable.

(e) *Submission of plan.* The savings association shall submit its plan to the appropriate Federal banking agency at least three months prior to the proposed effective date of the plan. The savings association shall also submit with its plan a description of its informal efforts to seek suggestions from members of the public, any written public comment received, and, if the plan was revised in light of the comment received, the initial plan as released for public comment.

(f) *Plan content*—(1) *Measurable goals.* (i) A savings association shall specify in its plan measurable goals for helping to meet the credit needs of each assessment area covered by the plan, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals, through lending, investment, and services, as appropriate.

(ii) A savings association shall address in its plan all three performance categories and, unless the savings association has been designated as a wholesale or limited purpose savings association, shall emphasize lending and lending-related activities. Nevertheless, a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its assessment area(s), considering public comment and the savings association's capacity and constraints, product offerings, and business strategy.

(2) *Confidential information.* A savings association may submit additional information to the appropriate Federal banking agency on a confidential basis, but the goals stated in the plan must be sufficiently specific to enable the public and the appropriate Federal banking agency to judge the merits of the plan.

(3) *Satisfactory and outstanding goals.* A savings association shall specify in its plan measurable goals that constitute ''satisfactory'' performance. A plan may specify measurable goals that constitute ''outstanding'' performance. If a savings association submits, and the appropriate Federal banking agency approves, both ''satisfactory'' and ''outstanding'' performance goals, the appropriate Federal banking agency will consider the savings association eligible for an ''outstanding'' performance rating.

(4) *Election if satisfactory goals not substantially met.* A savings association may elect in its plan that, if the savings association fails to meet substantially its plan goals for a satisfactory rating, the appropriate Federal banking agency will evaluate the savings association's performance under the lending,

investment, and service tests, the community development test, or the small savings association performance standards, as appropriate.

(g) *Plan approval*—(1) *Timing.* The appropriate Federal banking agency will act upon a plan within 60 calendar days after it receives the complete plan and other material required under paragraph (e) of this section. If the appropriate Federal banking agency fails to act within this time period, the plan shall be deemed approved unless the appropriate Federal banking agency extends the review period for good cause.

(2) *Public participation.* In evaluating the plan's goals, the appropriate Federal banking agency considers the public's involvement in formulating the plan, written public comment on the plan, and any response by the savings association to public comment on the plan.

(3) *Criteria for evaluating plan.* The appropriate Federal banking agency evaluates a plan's measurable goals using the following criteria, as appropriate:

(i) The extent and breadth of lending or lending-related activities, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels, the extent of community development lending, and the use of innovative or flexible lending practices to address credit needs;

(ii) The amount and innovativeness, complexity, and responsiveness of the savings association's qualified investments; and

(iii) The availability and effectiveness of the savings association's systems for delivering retail banking services and the extent and innovativeness of the savings association's community development services.

(h) *Plan amendment.* During the term of a plan, a savings association may request the appropriate Federal banking agency to approve an amendment to the plan on grounds that there has been a material change in circumstances. The savings association shall develop an amendment to a previously approved plan in accordance with the public participation requirements of paragraph (d) of this section.

(i) *Plan assessment.* The appropriate Federal banking agency approves the goals and assesses performance under a plan as provided for in appendix A of this part.

§ 195.28 Assigned ratings.

(a) *Ratings in general.* Subject to paragraphs (b) and (c) of this section, the appropriate Federal banking agency assigns to a savings association a rating of ''outstanding,'' ''satisfactory,'' ''needs to improve,'' or ''substantial noncompliance'' based on the savings association's performance under the lending, investment and service tests, the community development test, the small savings association performance standards, or an approved strategic plan, as applicable.

(b) *Lending, investment, and service tests.* The appropriate Federal banking agency assigns a rating for a savings association assessed under the lending, investment, and service tests in accordance with the following principles:

(1) A savings association that receives an ''outstanding'' rating on the lending test receives an assigned rating of at least ''satisfactory'';

(2) A savings association that receives an ''outstanding'' rating on both the service test and the investment test and a rating of at least ''high satisfactory'' on the lending test receives an assigned rating of ''outstanding''; and

(3) No savings association may receive an assigned rating of ''satisfactory'' or higher unless it receives a rating of at least ''low satisfactory'' on the lending test.

(c) *Effect of evidence of discriminatory or other illegal credit practices.* (1) The appropriate Federal banking agency's evaluation of a savings association's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the savings association or in any assessment area by any affiliate whose loans have been considered as part of the savings association's lending performance. In connection with any type of lending activity described in § 195.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

(i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(ii) Violations of the Home Ownership and Equity Protection Act;

(iii) Violations of section 5 of the Federal Trade Commission Act;

(iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and

(v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the savings association's assigned rating, the appropriate Federal banking agency considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the savings association (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the savings association (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

§ 195.29 Effect of CRA performance on applications.

(a) *CRA performance.* Among other factors, the appropriate Federal banking agency takes into account the record of performance under the CRA of each applicant savings association, and for applications under section 10(e) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)), of each proposed subsidiary savings association, in considering an application for:

(1) The establishment of a domestic branch or other facility that would be authorized to take deposits;

(2) The relocation of the main office or a branch;

(3) The merger or consolidation with or the acquisition of the assets or assumption of the liabilities of an insured depository institution requiring appropriate Federal banking agency approval under the Bank Merger Act (12 U.S.C. 1828(c));

(4) A Federal thrift charter; and

(5) Acquisitions subject to section 10(e) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)).

(b) *Charter application.* An applicant for a Federal thrift charter shall submit with its application a description of how it will meet its CRA objectives. The appropriate Federal banking agency takes the description into account in considering the application and may deny or condition approval on that basis.

(c) *Interested parties.* The appropriate Federal banking agency takes into account any views expressed by interested parties that are submitted in accordance with the applicable comment procedures in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.

(d) *Denial or conditional approval of application.* A savings association's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

(e) *Insured depository institution.* For purposes of this section, the term ''insured depository institution'' has the

meaning given to that term in 12 U.S.C. 1813.

Subpart C—Records, Reporting, and Disclosure Requirements

§ 195.41 Assessment area delineation.

(a) *In general.* A savings association shall delineate one or more assessment areas within which the appropriate Federal banking agency evaluates the savings association's record of helping to meet the credit needs of its community. The appropriate Federal banking agency does not evaluate the savings association's delineation of its assessment area(s) as a separate performance criterion, but the appropriate Federal banking agency reviews the delineation for compliance with the requirements of this section.

(b) *Geographic area(s) for wholesale or limited purpose savings associations.* The assessment area(s) for a wholesale or limited purpose savings association must consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the savings association has its main office, branches, and deposit-taking ATMs.

(c) *Geographic area(s) for other savings associations.* The assessment area(s) for a savings association other than a wholesale or limited purpose savings association must:

(1) Consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns; and

(2) Include the geographies in which the savings association has its main office, its branches, and its deposit-taking ATMs, as well as the surrounding geographies in which the savings association has originated or purchased a substantial portion of its loans (including home mortgage loans, small business and small farm loans, and any other loans the savings association chooses, such as those consumer loans on which the savings association elects to have its performance assessed).

(d) *Adjustments to geographic area(s).* A savings association may adjust the boundaries of its assessment area(s) to include only the portion of a political subdivision that it reasonably can be expected to serve. An adjustment is particularly appropriate in the case of an assessment area that otherwise would be extremely large, of unusual configuration, or divided by significant geographic barriers.

(e) *Limitations on the delineation of an assessment area. Each savings association's assessment area(s):*

(1) Must consist only of whole geographies;

(2) May not reflect illegal discrimination;

(3) May not arbitrarily exclude low- or moderate-income geographies, taking into account the savings association's size and financial condition; and

(4) May not extend substantially beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. If a savings association serves a geographic area that extends substantially beyond a state boundary, the savings association shall delineate separate assessment areas for the areas in each state. If a savings association serves a geographic area that extends substantially beyond an MSA boundary, the savings association shall delineate separate assessment areas for the areas inside and outside the MSA.

(f) *Savings associations serving military personnel.* Notwithstanding the requirements of this section, a savings association whose business predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area may delineate its entire deposit customer base as its assessment area.

(g) *Use of assessment area(s).* The appropriate Federal banking agency uses the assessment area(s) delineated by a savings association in its evaluation of the savings association's CRA performance unless the appropriate Federal banking agency determines that the assessment area(s) do not comply with the requirements of this section.

§ 195.42 Data collection, reporting, and disclosure.

(a) *Loan information required to be collected and maintained.* A savings association, except a small savings association, shall collect, and maintain in machine readable form (as prescribed by the appropriate Federal banking agency) until the completion of its next CRA examination, the following data for each small business or small farm loan originated or purchased by the savings association:

(1) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(2) The loan amount at origination;

(3) The loan location; and

(4) An indicator whether the loan was to a business or farm with gross annual revenues of $1 million or less.

(b) *Loan information required to be reported.* A savings association, except a small savings association or a savings association that was a small savings association during the prior calendar year, shall report annually by March 1 to the appropriate Federal banking agency in machine readable form (as prescribed by the agency) the following data for the prior calendar year:

(1) *Small business and small farm loan data.* For each geography in which the savings association originated or purchased a small business or small farm loan, the aggregate number and amount of loans:

(i) With an amount at origination of $100,000 or less;

(ii) With amount at origination of more than $100,000 but less than or equal to $250,000;

(iii) With an amount at origination of more than $250,000; and

(iv) To businesses and farms with gross annual revenues of $1 million or less (using the revenues that the savings association considered in making its credit decision);

(2) *Community development loan data.* The aggregate number and aggregate amount of community development loans originated or purchased; and

(3) *Home mortgage loans.* If the savings association is subject to reporting under part 1003 of this title, the location of each home mortgage loan application, origination, or purchase outside the MSAs in which the savings association has a home or branch office (or outside any MSA) in accordance with the requirements of part 1003 of this title.

(c) *Optional data collection and maintenance*—(1) *Consumer loans.* A savings association may collect and maintain in machine readable form (as prescribed by the appropriate Federal banking agency) data for consumer loans originated or purchased by the savings association for consideration under the lending test. A savings association may maintain data for one or more of the following categories of consumer loans: Motor vehicle, credit card, other secured, and other unsecured. If the savings association maintains data for loans in a certain category, it shall maintain data for all loans originated or purchased within that category. The savings association shall maintain data separately for each category, including for each loan:

(i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(ii) The loan amount at origination or purchase;

(iii) The loan location; and

(iv) The gross annual income of the borrower that the savings association considered in making its credit decision.

(2) *Other loan data.* At its option, a savings association may provide other information concerning its lending performance, including additional loan distribution data.

(d) *Data on affiliate lending.* A savings association that elects to have the appropriate Federal banking agency consider loans by an affiliate, for purposes of the lending or community development test or an approved strategic plan, shall collect, maintain, and report for those loans the data that the savings association would have collected, maintained, and reported pursuant to paragraphs (a), (b), and (c) of this section had the loans been originated or purchased by the savings association. For home mortgage loans, the savings association shall also be prepared to identify the home mortgage loans reported under part 1003 of this title by the affiliate.

(e) *Data on lending by a consortium or a third-party.* A savings association that elects to have the appropriate Federal banking agency consider community development loans by a consortium or third party, for purposes of the lending or community development tests or an approved strategic plan, shall report for those loans the data that the savings association would have reported under paragraph (b)(2) of this section had the loans been originated or purchased by the savings association.

(f) *Small savings associations electing evaluation under the lending, investment, and service tests.* A savings association that qualifies for evaluation under the small savings association performance standards but elects evaluation under the lending, investment, and service tests shall collect, maintain, and report the data required for other savings associations pursuant to paragraphs (a) and (b) of this section.

(g) *Assessment area data.* A savings association, except a small savings association or a savings association that was a small savings association during the prior calendar year, shall collect and report to the appropriate Federal banking agency by March 1 of each year a list for each assessment area showing the geographies within the area.

(h) *CRA Disclosure Statement.* The appropriate Federal banking agency prepares annually for each savings association that reports data pursuant to this section a CRA Disclosure Statement that contains, on a state-by-state basis:

(1) For each county (and for each assessment area smaller than a county) with a population of 500,000 persons or fewer in which the savings association reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in low-, moderate-, middle-, and upper-income geographies;

(ii) A list grouping each geography according to whether the geography is low-, moderate-, middle-, or upper-income;

(iii) A list showing each geography in which the savings association reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(2) For each county (and for each assessment area smaller than a county) with a population in excess of 500,000 persons in which the savings association reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in geographies with median income relative to the area median income of less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(ii) A list grouping each geography in the county or assessment area according to whether the median income in the geography relative to the area median income is less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(iii) A list showing each geography in which the savings association reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(3) The number and amount of small business and small farm loans located inside each assessment area reported by the savings association and the number and amount of small business and small farm loans located outside the assessment area(s) reported by the savings association; and

(4) The number and amount of community development loans reported as originated or purchased.

(i) *Aggregate disclosure statements.* The appropriate Federal banking agency, in conjunction with the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation or the OCC, as appropriate, prepares annually, for each MSA or metropolitan division (including an MSA or metropolitan division that crosses a state boundary) and the nonmetropolitan portion of each state, an aggregate disclosure statement of small business and small farm lending by all institutions subject to reporting under this part or parts 25, 228, or 345 of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the appropriate Federal banking agency may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

(j) *Central data depositories.* The appropriate Federal banking agency makes the aggregate disclosure statements, described in paragraph (i) of this section, and the individual savings association CRA Disclosure Statements, described in paragraph (h) of this section, available to the public at central data depositories. The appropriate Federal banking agency publishes a list of the depositories at which the statements are available.

§ 195.43 Content and availability of public file.

(a) *Information available to the public.* A savings association shall maintain a public file that includes the following information:

(1) All written comments received from the public for the current year and each of the prior two calendar years that specifically relate to the savings association's performance in helping to meet community credit needs, and any response to the comments by the savings association, if neither the comments nor the responses contain

statements that reflect adversely on the good name or reputation of any persons other than the savings association or publication of which would violate specific provisions of law;

(2) A copy of the public section of the savings association's most recent CRA Performance Evaluation prepared by the appropriate Federal banking agency. The savings association shall place this copy in the public file within 30 business days after its receipt from the appropriate Federal banking agency;

(3) A list of the savings association's branches, their street addresses, and geographies;

(4) A list of branches opened or closed by the savings association during the current year and each of the prior two calendar years, their street addresses, and geographies;

(5) A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the savings association's branches and descriptions of material differences in the availability or cost of services at particular branches, if any. At its option, a savings association may include information regarding the availability of alternative systems for delivering retail banking services (*e.g.,* ATMs, ATMs not owned or operated by or exclusively for the savings association, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs);

(6) A map of each assessment area showing the boundaries of the area and identifying the geographies contained within the area, either on the map or in a separate list; and

(7) Any other information the savings association chooses.

(b) *Additional information available to the public*—(1) *Savings associations other than small savings associations.* A savings association, except a small savings association or a savings association that was a small savings association during the prior calendar year, shall include in its public file the following information pertaining to the savings association and its affiliates, if applicable, for each of the prior two calendar years:

(i) If the savings association has elected to have one or more categories of its consumer loans considered under the lending test, for each of these categories, the number and amount of loans:

(A) To low-, moderate-, middle-, and upper-income individuals;

(B) Located in low-, moderate-, middle-, and upper-income census tracts; and

(C) Located inside the savings association's assessment area(s) and outside the savings association's assessment area(s); and

(ii) The savings association's CRA Disclosure Statement. The savings association shall place the statement in the public file within three business days of its receipt from the appropriate Federal banking agency.

(2) *Savings associations required to report Home Mortgage Disclosure Act (HMDA) data.* A savings association required to report home mortgage loan data pursuant part 1003 of this title shall include in its public file a written notice that the institution's HMDA Disclosure Statement may be obtained on the Consumer Financial Protection Bureau's (Bureau's) website at *www.consumerfinance.gov/hmda.* In addition, a savings association that elected to have the appropriate Federal banking agency consider the mortgage lending of an affiliate shall include in its public file the name of the affiliate and a written notice that the affiliate's HMDA Disclosure Statement may be obtained at the Bureau's website. The savings association shall place the written notice(s) in the public file within three business days after receiving notification from the Federal Financial Institutions Examination Council of the availability of the disclosure statement(s).

(3) *Small savings associations.* A small savings association or a savings association that was a small savings association during the prior calendar year shall include in its public file:

(i) The savings association's loan-to-deposit ratio for each quarter of the prior calendar year and, at its option, additional data on its loan-to-deposit ratio; and

(ii) The information required for other savings associations by paragraph (b)(1) of this section, if the savings association has elected to be evaluated under the lending, investment, and service tests.

(4) *Savings associations with strategic plans.* A savings association that has been approved to be assessed under a strategic plan shall include in its public file a copy of that plan. A savings association need not include information submitted to the appropriate Federal banking agency on a confidential basis in conjunction with the plan.

(5) *Savings associations with less than satisfactory ratings.* A savings association that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The savings association shall update the description quarterly.

(c) *Location of public information.* A savings association shall make available to the public for inspection upon request and at no cost the information required in this section as follows:

(1) At the main office and, if an interstate savings association, at one branch office in each state, all information in the public file; and

(2) At each branch:

(i) A copy of the public section of the savings association's most recent CRA Performance Evaluation and a list of services provided by the branch; and

(ii) Within five calendar days of the request, all the information in the public file relating to the assessment area in which the branch is located.

(d) *Copies.* Upon request, a savings association shall provide copies, either on paper or in another form acceptable to the person making the request, of the information in its public file. The savings association may charge a reasonable fee not to exceed the cost of copying and mailing (if applicable).

(e) *Updating.* Except as otherwise provided in this section, a savings association shall ensure that the information required by this section is current as of April 1 of each year.

§ 195.44 Public notice by savings associations.

A savings association shall provide in the public lobby of its main office and each of its branches the appropriate public notice set forth in appendix B of this part. Only a branch of a savings association having more than one assessment area shall include the bracketed material in the notice for branch offices. Only a savings association that is an affiliate of a holding company shall include the last two sentences of the notices.

§ 195.45 Publication of planned examination schedule.

The appropriate Federal banking agency publishes at least 30 days in advance of the beginning of each calendar quarter a list of savings associations scheduled for CRA examinations in that quarter.

Appendix A to Part 195—Ratings

(a) *Ratings in general.* (1) In assigning a rating, the appropriate Federal banking agency evaluates a savings association's performance under the applicable performance criteria in this part, in accordance with §§ 195.21 and 195.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as

adjustments on the basis of evidence of discriminatory or other illegal credit practices.

(2) A savings association's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The savings association's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as follows.

(b) *Savings associations evaluated under the lending, investment, and service tests*—(1) *Lending performance rating.* The appropriate Federal banking agency assigns each savings association's lending performance one of the five following ratings.

(i) *Outstanding.* The appropriate Federal banking agency rates a savings association's lending performance ''outstanding'' if, in general, it demonstrates:

(A) Excellent responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A substantial majority of its loans are made in its assessment area(s);

(C) An excellent geographic distribution of loans in its assessment area(s);

(D) An excellent distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the savings association;

(E) An excellent record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Extensive use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It is a leader in making community development loans.

(ii) *High satisfactory.* The appropriate Federal banking agency rates a savings association's lending performance ''high satisfactory'' if, in general, it demonstrates:

(A) Good responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A high percentage of its loans are made in its assessment area(s);

(C) A good geographic distribution of loans in its assessment area(s);

(D) A good distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the savings association;

(E) A good record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a relatively high level of community development loans.

(iii) *Low satisfactory.* The appropriate Federal banking agency rates a savings association's lending performance ''low satisfactory'' if, in general, it demonstrates:

(A) Adequate responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) An adequate percentage of its loans are made in its assessment area(s);

(C) An adequate geographic distribution of loans in its assessment area(s);

(D) An adequate distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the savings association;

(E) An adequate record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Limited use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made an adequate level of community development loans.

(iv) *Needs to improve.* The appropriate Federal banking agency rates a savings association's lending performance ''needs to improve'' if, in general, it demonstrates:

(A) Poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A small percentage of its loans are made in its assessment area(s);

(C) A poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the savings association;

(E) A poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Little use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a low level of community development loans.

(v) *Substantial noncompliance.* The appropriate Federal banking agency rates a savings association's lending performance as being in ''substantial noncompliance'' if, in general, it demonstrates:

(A) A very poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A very small percentage of its loans are made in its assessment area(s);

(C) A very poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A very poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the savings association;

(E) A very poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) No use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made few, if any, community development loans.

(2) *Investment performance rating.* The appropriate Federal banking agency assigns each savings association's investment performance one of the five following ratings.

(i) *Outstanding.* The appropriate Federal banking agency rates a savings association's investment performance ''outstanding'' if, in general, it demonstrates:

(A) An excellent level of qualified investments, particularly those that are not routinely provided by private investors, often in a leadership position;

(B) Extensive use of innovative or complex qualified investments; and

(C) Excellent responsiveness to credit and community development needs.

(ii) *High satisfactory.* The appropriate Federal banking agency rates a savings association's investment performance ''high satisfactory'' if, in general, it demonstrates:

(A) A significant level of qualified investments, particularly those that are not routinely provided by private investors, occasionally in a leadership position;

(B) Significant use of innovative or complex qualified investments; and

(C) Good responsiveness to credit and community development needs.

(iii) *Low satisfactory.* The appropriate Federal banking agency rates a savings association's investment performance ''low satisfactory'' if, in general, it demonstrates:

(A) An adequate level of qualified investments, particularly those that are not routinely provided by private investors, although rarely in a leadership position;

(B) Occasional use of innovative or complex qualified investments; and

(C) Adequate responsiveness to credit and community development needs.

(iv) *Needs to improve.* The appropriate Federal banking agency rates a savings

association's investment performance ''needs to improve'' if, in general, it demonstrates:

(A) A poor level of qualified investments, particularly those that are not routinely provided by private investors;

(B) Rare use of innovative or complex qualified investments; and

(C) Poor responsiveness to credit and community development needs.

(v) *Substantial noncompliance.* The appropriate Federal banking agency rates a savings association's investment performance as being in ''substantial noncompliance'' if, in general, it demonstrates:

(A) Few, if any, qualified investments, particularly those that are not routinely provided by private investors;

(B) No use of innovative or complex qualified investments; and

(C) Very poor responsiveness to credit and community development needs.

(3) *Service performance rating.* The appropriate Federal banking agency assigns each savings association's service performance one of the five following ratings.

(i) *Outstanding.* The appropriate Federal banking agency rates a savings association's service performance ''outstanding'' if, in general, the savings association demonstrates:

(A) Its service delivery systems are readily accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has improved the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) are tailored to the convenience and needs of its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It is a leader in providing community development services.

(ii) *High satisfactory.* The appropriate Federal banking agency rates a savings association's service performance ''high satisfactory'' if, in general, the savings association demonstrates:

(A) Its service delivery systems are accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides a relatively high level of community development services.

(iii) *Low satisfactory.* The appropriate Federal banking agency rates a savings association's service performance ''low satisfactory'' if, in general, the savings association demonstrates:

(A) Its service delivery systems are reasonably accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has generally not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides an adequate level of community development services.

(iv) *Needs to improve.* The appropriate Federal banking agency rates a savings association's service performance ''needs to improve'' if, in general, the savings association demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides a limited level of community development services.

(v) *Substantial noncompliance.* The appropriate Federal banking agency rates a savings association's service performance as being in ''substantial noncompliance'' if, in general, the savings association demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to significant portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has significantly adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that significantly inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides few, if any, community development services.

(c) *Wholesale or limited purpose savings associations.* The appropriate Federal banking agency assigns each wholesale or limited purpose savings association's community development performance one of the four following ratings.

(1) *Outstanding.* The appropriate Federal banking agency rates a wholesale or limited purpose savings association's community development performance ''outstanding'' if, in general, it demonstrates:

(i) A high level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Extensive use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Excellent responsiveness to credit and community development needs in its assessment area(s).

(2) *Satisfactory.* The appropriate Federal banking agency rates a wholesale or limited purpose savings association's community development performance ''satisfactory'' if, in general, it demonstrates:

(i) An adequate level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Occasional use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Adequate responsiveness to credit and community development needs in its assessment area(s).

(3) *Needs to improve.* The appropriate Federal banking agency rates a wholesale or limited purpose savings association's community development performance as ''needs to improve'' if, in general, it demonstrates:

(i) A poor level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Rare use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Poor responsiveness to credit and community development needs in its assessment area(s).

(4) *Substantial noncompliance.* The appropriate Federal banking agency rates a wholesale or limited purpose savings association's community development performance in ''substantial noncompliance'' if, in general, it demonstrates:

(i) Few, if any, community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) No use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Very poor responsiveness to credit and community development needs in its assessment area(s).

(d) *Savings associations evaluated under the small savings association performance standard*—(1)*Lending test ratings.* (i) *Eligibility for a satisfactory lending test rating.* The appropriate Federal banking agency rates a small savings association's lending performance ''satisfactory'' if, in general, the savings association demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the savings association's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, other lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;

(B) A majority of its loans and, as appropriate, other lending-related activities, are in its assessment area;

(C) A distribution of loans to and, as appropriate, other lending-related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the savings association's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the savings association's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the savings association's assessment area(s).

(ii) *Eligibility for an ''outstanding'' lending test rating.* A small savings association that meets each of the standards for a ''satisfactory'' rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of ''outstanding.''

(iii) *Needs to improve or substantial noncompliance ratings.* A small savings association may also receive a lending test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standard for a ''satisfactory'' rating.

(2) *Community development test ratings for intermediate small savings associations*—(i) *Eligibility for a satisfactory community development test rating.* The appropriate Federal banking agency rates an intermediate small savings association's community development performance ''satisfactory'' if the savings association demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the savings association's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the savings association's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The appropriate Federal banking agency rates an intermediate small savings association's community development performance ''outstanding'' if the savings association demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the savings association's capacity and the need and availability of such opportunities for community development in the savings association's assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate small savings association may also receive a community development test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

(3) *Overall rating*—(i) *Eligibility for a satisfactory overall rating.* No intermediate small savings association may receive an assigned overall rating of ''satisfactory'' unless it receives a rating of at least ''satisfactory'' on both the lending test and the community development test.

(ii) *Eligibility for an outstanding overall rating.* (A) An intermediate small savings association that receives an ''outstanding'' rating on one test and at least ''satisfactory'' on the other test may receive an assigned overall rating of ''outstanding.''

(B) A small savings association that is not an intermediate small savings association that meets each of the standards for a ''satisfactory'' rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of ''outstanding.'' In assessing whether a savings association's performance is ''outstanding,'' the appropriate Federal banking agency considers the extent to which the savings association exceeds each of the performance standards for a ''satisfactory'' rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial noncompliance overall ratings.* A small savings association may also receive a rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

(e) *Strategic plan assessment and rating*—(1) *Satisfactory goals.* The appropriate Federal banking agency approves as ''satisfactory'' measurable goals that adequately help to meet the credit needs of the savings association's assessment area(s).

(2) *Outstanding goals.* If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as ''satisfactory,'' the appropriate Federal banking agency will approve those goals as ''outstanding.''

(3) *Rating.* The appropriate Federal banking agency assesses the performance of a savings association operating under an approved plan to determine if the savings association has met its plan goals:

(i) If the savings association substantially achieves its plan goals for a satisfactory rating, the appropriate Federal banking agency will rate the savings association's performance under the plan as ''satisfactory.''

(ii) If the savings association exceeds its plan goals for a satisfactory rating and substantially achieves its plan goals for an outstanding rating, the appropriate Federal banking agency will rate the savings association's performance under the plan as ''outstanding.''

(iii) If the savings association fails to meet substantially its plan goals for a satisfactory rating, the appropriate Federal banking agency will rate the savings association as either ''needs to improve'' or ''substantial noncompliance,'' depending on the extent to which it falls short of its plan goals, unless the savings association elected in its plan to be rated otherwise, as provided in § 195.27(f)(4).

Appendix B to Part 195—CRA Notice

(a) *Notice for main offices and, if an interstate savings association, one branch office in each state.*

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the [Office of the Comptroller of the Currency (OCC) or Federal Deposit Insurance Corporation (FDIC)] evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The [OCC or FDIC] also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA Performance Evaluation, prepared by the [OCC or FDIC]; and comments received from the public relating to our performance in helping to meet community credit needs, as well as our responses to those comments. You may review this information today.

At least 30 days before the beginning of each quarter, the [OCC or FDIC] publishes a nationwide list of the savings associations that are scheduled for CRA examination in that quarter. This list is available from the [OCC Deputy Comptroller (address) or FDIC appropriate regional director (address)]. You may send written comments about our performance in helping to meet community credit needs to (name and address of official at savings association) and the [OCC Deputy Comptroller (address) or FDIC appropriate regional director (address)]. Your letter, together with any response by us, will be considered by the [OCC or FDIC] in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the [OCC Deputy Comptroller or FDIC appropriate regional director]. You may also request from the [OCC Deputy Comptroller or FDIC appropriate regional director] an announcement of our applications covered by the CRA filed with the [OCC or FDIC]. We are an affiliate of (name of holding company), a savings and loan holding company. You may request from the (title of responsible official), Federal Reserve Bank of _____ (address) an announcement of applications covered by the CRA filed by savings and loan holding companies.

(b) Notice for branch offices.

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the [Office of the

Comptroller of the Currency (OCC) or Federal Deposit Insurance Corporation (FDIC)] evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The [OCC or FDIC] also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA. You may review today the public section of our most recent CRA evaluation, prepared by the [OCC or FDIC] and a list of services provided at this branch. You may also have access to the following additional information, which we will make available to you at this branch within five calendar days after you make a request to us: (1) A map showing the assessment area containing this branch, which is the area in which the [OCC or FDIC] evaluates our CRA performance in this community; (2) information about our branches in this assessment area; (3) a list of services we provide at those locations; (4) data on our lending performance in this assessment area; and (5) copies of all written comments received by us that specifically relate to our CRA performance in this assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

[If you would like to review information about our CRA performance in other communities served by us, the public file for our entire savings association is available at (name of office located in state), located at (address).]

At least 30 days before the beginning of each quarter, the [OCC or FDIC] publishes a nationwide list of the savings associations that are scheduled for CRA examination in that quarter. This list is available from the [OCC Deputy Comptroller (address) or FDIC appropriate regional office (address)]. You may send written comments about our performance in helping to meet community credit needs to (name and address of official at savings association) and the [OCC or FDIC]. Your letter, together with any response by us, will be considered by the [OCC or FDIC] in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the [OCC Deputy Comptroller or FDIC appropriate regional director]. You may also request an announcement of our applications covered by the CRA filed with the [OCC Deputy Comptroller or FDIC appropriate regional director]. We are an affiliate of (name of holding company), a savings and loan holding company. You may request from the (title of responsible official), Federal Reserve Bank of _____ (address) an announcement of applications covered by the CRA filed by savings and loan holding companies.

Michael J. Hsu,

Acting Comptroller of the Currency.

[FR Doc. 2021–19738 Filed 9–16–21; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL REGISTER

Vol. 86 Friday,
No. 178 September 17, 2021

Part IV

The President

Federal Register
Vol. 86, No. 178
Friday, September 17, 2021

Presidential Documents

Title 3—

The President

Proclamation 10257 of September 14, 2021

National Hispanic Heritage Month, 2021

By the President of the United States of America

A Proclamation

During National Hispanic Heritage Month, we recognize that Hispanic heritage is American heritage. We see it in every aspect of our national life: on our television and movie screens, in the music that moves our feet, and in the foods we enjoy. We benefit from the many contributions of Hispanic scientists working in labs across the country to help us fight COVID–19 and the doctors and the nurses on the front lines caring for people's health. Our Nation is represented by Hispanic diplomats who share our values in countries all over the world and strengthened by military members and their families who serve and sacrifice for the United States. Our communities are represented by Hispanic elected officials, and our children are taught by Hispanic teachers. Our future will be shaped by Hispanic engineers who are working to develop new technology that will help us grasp our clean energy future and by the skilled union workers who are going to build it.

National Hispanic Heritage Month is an important reminder of how much strength we draw as a Nation from our immigrant roots and our values as a Nation of immigrants. I am proud to recognize my four Hispanic Cabinet Secretaries—Secretary of Health and Human Services Xavier Becerra, Secretary of Homeland Security Alejandro Mayorkas, Secretary of Education Miguel Cardona and Small Business Administrator Isabel Guzman—who are all leading executive departments that oversee critical components of American life. My Administration is focused on making equity a priority and ensuring that Hispanics are front and center in our efforts to improve the lives of working families across the country.

During National Hispanic Heritage Month, we also recognize that America cannot succeed unless Hispanic families and communities succeed, sharing equally in the benefits of our recovery and our investments. My American Rescue Plan provided much-needed relief to the Hispanic community during the pandemic. Additional Paycheck Protection Program funding for small businesses and rental assistance has helped families stay in their homes, and the child tax credit is helping lift Hispanic children out of poverty.

A critical key to building back better is ensuring that Hispanic communities also benefit from investments in roads, clean water, and broadband as well as access to early education and other resources that support working families and improve educational outcomes. We must also continue the fight to protect the sacred right to vote and provide a pathway to citizenship for undocumented Hispanics—especially Dreamers, Temporary Protected Status holders, farmworkers, and essential workers—through desperately needed immigration reform. Creating a pathway to citizenship is a top priority for my Administration not only because this benefits our Nation's economy but also because it is the right thing to do.

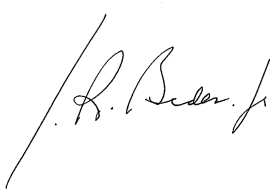
As we honor and celebrate the contributions of Hispanics to our Nation, we also reaffirm our commitment to extending the hand of friendship to Latin America and strengthening democracy in the region. My Administration has sent over 5 million doses of the COVID–19 vaccine to Mexico with millions more on the way. We have donated over 33 million doses of

the vaccine to 21 other countries in Latin America. This included the first doses of the vaccine to reach Haiti, carried there by the United States Coast Guard. This vaccine will help protect Haiti's first responders and health care workers.

In recognition of the achievements of Hispanics, the Congress, by Public Law 100–402, as amended, has authorized and requested the President to issue annually a proclamation designating September 15 through October 15 as ''National Hispanic Heritage Month.''

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 15 through October 15, 2021, as National Hispanic Heritage Month. I call upon public officials, educators, librarians, and all Americans to observe this month with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth 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. 2021–20345
Filed 9–16–21; 11:15 am]
Billing code 3295–F1–P

Presidential Documents

Notice of September 15, 2021

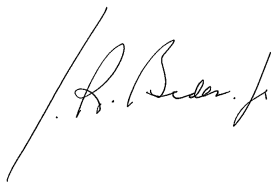
Continuation of the National Emergency With Respect to Persons Who Commit, Threaten To Commit, or Support Terrorism

On September 23, 2001, by Executive Order 13224, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the terrorist attacks on September 11, 2001, in New York and Pennsylvania and against the Pentagon, and the continuing and immediate threat of further attacks against United States nationals or the United States.

On September 9, 2019, the President signed Executive Order 13886 to strengthen and consolidate sanctions to combat the continuing threat posed by international terrorism and to take additional steps to deal with the national emergency declared in Executive Order 13224, as amended.

The actions of persons who commit, threaten to commit, or support terrorism continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For this reason, the national emergency declared in Executive Order 13224 of September 23, 2001, as amended, and the measures adopted to deal with that emergency, must continue in effect beyond September 23, 2021. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to persons who commit, threaten to commit, or support terrorism declared in Executive Order 13224, as amended.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
September 15, 2021.

[FR Doc. 2021–20351
Filed 9–16–21; 11:15 am]
Billing code 3295–F1–P

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